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Supreme Court of the United States

OCTOBER TERM, 1957

No. 39

MICHAEL WILSON, *et al.*,

Petitioners,

vs.

LOEW'S INCORPORATED, a corporation, *et al.*,

Respondents.

On Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Three.

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 33

MICHAEL WILSON, *et al.*,

Petitioners,

vs.

LOEW'S INCORPORATED, a corporation, *et al.*,

Respondents.

On Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Three.

BRIEF FOR PETITIONERS.

Opinions Below.

The opinion of the District Court of Appeal [R. 63] is reported at 142 Cal. App. 2d 183, 298 P. 2d 152. The opinion of the Superior Court [R. 44] is not reported. No written opinion was rendered by the Supreme Court of the State of California in denying the petition for hearing [R. 78].

Jurisdiction.

The judgments of the District Court of Appeal were made and entered on June 11, 1956 [R. 63]. A timely petition for rehearing was filed in the District Court of Appeal and denied on July 11, 1956 [R. 78]. A timely petition for hearing by the Supreme Court of the State

of California was filed and denied on August 8, 1956 [R. 78], Mr. Justice Carter being of the opinion that the petition should be granted. The petition for a writ of certiorari herein was duly filed on November 5, 1956, and was granted January 21, 1957 [R. 79], 352 U. S. 980. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

Constitutional Provisions and Statutes Involved.

The pertinent text of the constitutional provisions and statutes involved are set forth in Appendix A, annexed to the brief herein.

Questions Presented.

The questions presented herein arise out of the sustaining without leave to amend of a demurrer to a complaint. The complaint alleges that a combination of respondent motion picture companies, exercising a monopoly of employment opportunities in that industry, together with certain members and an investigator (acting both in official and unofficial capacities) of the House Committee on Un-American Activities (hereinafter referred to as the Committee), by concerted agreement and conduct have excluded petitioners, who had long and successful professional careers in the motion picture industry, from all employment opportunities in that industry. The cause for such exclusion is that petitioners have either invoked their constitutional privileges and rights before the Committee or when named as Communists before that committee have failed voluntarily to appear and testify without invocation of their constitutional rights and privileges. The purpose of the agreement is to limit the political beliefs and activities of employees in the industry, and the content of motion pictures, to those acceptable to the

Committee. The Court below based its decision on the absence of an allegation in the complaint that petitioners had specific or prospective contracts of employment, holding that any individual who asserts his Fifth Amendment privilege may lawfully be excluded from all opportunity to pursue a calling if he does not have a specific contract of employment or the expectation of such a specific contract in the industry from which he is excluded. The questions presented under the aforesaid circumstances are:

1. Whether this Court has jurisdiction to review the judgments of the state court dismissing petitioners' complaint on respondents' demurrers.

2. Whether the judgments of the state court dismissing petitioners' complaint on respondents' demurrers as aforesaid was contrary to law and the supremacy clause of Article VI of the Constitution, deprived petitioners of their liberty and property without due process of law and denied petitioners the equal protection of the laws in violation of the equal protection and due process provisions of the Fourteenth Amendment.

Statement of the Case.

The complaint herein alleging the following facts was dismissed upon demurrers without leave to amend.

(a) Petitioners *are* by profession motion picture actors, actresses, writers, story editors, research workers and grips, respectively, having had from five to twenty-five years' experience in their professions, having acquired reputations for excellence of work in the motion picture industry and having won high esteem as such professional persons in the said industry, all of which was known to respondents [R. 2, 12, 38].

(b) The respondent motion picture producers and distributors [R. 29-34] between them control all motion picture production and distribution in the United States and all motion picture employment opportunities in the United States for all employees in the said industry [R. 34].

(c) With respect to the matters alleged in the complaint, the three remaining respondents acted both in their official capacity with relation to the Committee and individually in non-official capacities. Two of said respondents are members of and the third is an investigator employed by the Committee [R. 34].

(d) On and prior to March, 1951, and continuously thereafter, respondents and each of them agreed with each other as follows:

1. To refuse employment to and exclude from employment in the said industry all employees and persons seeking employment who were subpoenaed as witnesses before the Committee and who, relying on their rights and privileges under the Constitution, including the privilege against self-incrimination under the Fifth Amendment, refused to answer questions concerning their political affiliations, associations and beliefs.

2. To refuse employment to and exclude from employment all persons and employees who were named before said Committee as Communists and who failed to appear voluntarily before said House Committee to answer all inquiries without assertion of constitutional privileges.

3. To refuse employment to and exclude from employment all persons and employees who were subpoenaed to appear as witnesses before said Committee and who failed for any reason to appear and testify fully.

4. To refuse employment to and exclude from employment all persons and employees who were suspected of ever having been Communists or having any associations with Communists and who refused or failed voluntarily to appear before said Committee or its agents and waive and surrender their constitutional rights and privileges and testify or give statements fully disclosing their own political affiliations, associations and beliefs and those of their families, friends, associates and acquaintances [R. 35].

(e) Respondents and each of them maliciously and without justification undertook to and did induce and persuade each other, and other employers in the said industry, to desist and refrain from employing and to refuse employment to all such aforesaid persons and employees, with the intent to prevent such employees and other persons from having or obtaining employment in the said motion picture industry [R. 35].

(f) As a part of the aforesaid agreement, and as one of the means of effectuating it, all of the respondents have published and circulated and are now publishing and circulating throughout the entire industry a list containing the names of such employees and other persons with the direction and intent that they be not employed [R. 36].

(g) The purpose of the aforesaid agreement is as follows:

1. To limit, control and direct the political activities of respondents' employees.

2. To coerce and influence said employees through and by means of threat of discharge and loss of employment to refrain from adopting or following any

course or line of political action and activity not acceptable to the Committee.

3. To limit employment in the motion picture industry to those persons whose political beliefs are acceptable to the Committee.

4. To limit the production of motion pictures by said industry to those the content of which is acceptable to the Committee [R. 37].

(h) Petitioners, eighteen in number, appeared on various dates in 1951 and 1952 as witnesses before the said House Committee pursuant to subpoena and refused, respectively, to answer certain questions concerning their political affiliations, beliefs and associations, basing their refusal upon their constitutional rights including the privilege against self-incrimination under the Fifth Amendment to the Constitution [R. 12, 38].

(i) Petitioners, five in number, on various dates in 1951 were named as Communists, respectively, by some witness appearing before the Committee. Petitioners failed and refused to voluntarily appear before the said Committee to answer questions concerning their political affiliations, beliefs and associations, basing their refusal upon their constitutional rights including their privilege against self incrimination under the Fifth Amendment [R. 14, 38].

(j) As a result thereof and by reason of the acts of and pursuant to the aforesaid agreement of respondents, petitioners ever since the dates aforesaid have been and now are refused and are excluded from employment in the motion picture industry by these respondents and all other employers in said industry; and therefore petitioners will henceforth continue to find it impossible to obtain em-

ployment in the profession to which they have devoted a major part of their entire lives and energies [R. 36].

(k) Petitioners have suffered pecuniary loss and irreparable injury and pray for actual and punitive money damages and injunctive relief [R. 37].

The California District Court of Appeal in sustaining the judgments of dismissal of this complaint took judicial notice of portions of the actual testimony of certain of the Petitioners before the Committee, holding that "the complaint is to be implemented by the facts of which we take judicial notice." These, the Court held, include "proceedings and reports of the Committee on Un-American Activities," revealing the refusal by 18 of the 23 Petitioners to answer, on grounds of possible self-incrimination, questions concerning membership in the Communist Party [R. 67]. The complaint was construed and evaluated in the light of this judicial notice. There are additional matters of judicial notice from the same sources which are pertinent and which the State Court did not discuss in its opinion.

The Committee's investigation of the motion picture industry began in 1947 with a hearing in Washington chaired by Congressman Thomas. It was announced at the outset that the hearings were not intended as an attack upon the great majority of persons associated with the industry, but only to "expose" the "subversives" (79 in number as of that time) therein (App. B.1(a), p. 5). That the purpose of this "exposure" was to secure the discharge and permanent exclusion from the industry of the individuals exposed soon became clear (App. B.1(b), p. 7). At that time the position of leading figures in the industry was that a blacklist was illegal, and that they would not establish one. What the producers were con-

cerned with was good scripts, not the beliefs of their authors (App. B.1(c), p. 13).

The Committee's interest in and attempt to control the content of motion pictures was manifested by the presentation of testimony labelling certain motion pictures subversive on grounds that they portrayed certain aspects of American life in an unfavorable light or of Russian life as being something less than morbid. This the industry opposed as censorship (see App. B.1(d), p. 22).

Prior to the hearings the Motion Picture Producers Association (composed of the major producers in the United States) adopted a policy statement which was submitted at the hearings demanding a fair investigation "to end all investigations in Hollywood" and stating that all attempts at censorship would be resisted as an attack upon a vital American freedom. At the same time a proposal that proven Communists not be employed in Hollywood jobs was rejected for three reasons. First, such a "potential conspiracy" to refuse to hire people was opposed by the advice of the legal counsel of the group. Second, there was no way for the producers to prove that an individual was a Communist "by due process of law in the traditional American manner," as distinct from the utilization for this purpose of a power "arrogated to some Committee." Third, before the producers could act it was up to Congress to determine that a Communist is either an agent of a foreign government or an advocate of force and violence (App. B.1(e), p. 42).

What the complaint alleges and what is admitted here is the formation of the precise conspiracy which was "potential" at the time of those hearings; this "potential" conspiracy was condemned as illegal by Respondents themselves; nevertheless it has been entered into with the Com-

mittee and its members for the very purpose of destroying those freedoms which Respondents swore to defend. The campaign of the Committee to eliminate non-conformists, labelled as subversive by the Committee, from the motion picture industry as well as other media of public entertainment has continued as one of its principal preoccupations (see App. B.2(a), p. 47). So, too, with its penetration into the field of ideas which continues unabated (see App. B.2(b), p. 57).

All of the Petitioners, except one, were named as former members of the Communist Party by various witnesses testifying before the Committee (see App. B.3(a), p. 59, for citations). However, there was no evidence presented to the Committee that any of them had ever engaged in or approved any unlawful advocacy or conduct of any kind whatsoever. On the other hand, witnesses upon whom the Committee relied for its information testified that the groups to which Petitioners allegedly belonged had engaged exclusively in lawful discussion, advocacy and conduct within the area protected by the Bill of Rights. Typical matters included support of the war effort during World War II, elimination of discrimination in employment in and the cultural aspects of the motion picture industry, and support of candidates for political office (see App. B.3(b), p. 60).

During the course of various separate hearings, most of these Petitioners were called as witnesses. Some of them were questioned concerning their careers in the motion picture industry and testified to high distinctions and long service acquired in the professions in which they were then engaged.* Several were Academy Award win-

*Many of them indicated that they had lost their employment in the industry concurrently with or just prior to the receipt of subpoenas from the Committee.

ners. Gale Sondergaard had won one award for her performance in "Anthony Adverse" and had been nominated for another for her role in "Anna and the King of Siam." Ann Revere had won an Oscar for her part in "National Velvet." And Michael Wilson had written two screen plays, one of which, "A Place in the Sun" later won an Academy Award for him and the other, "the Friendly Persuasion," resulted in his nomination for an award but he was ruled out of the final vote because he was a blacklisted writer. Typical of the testimony of these Petitioners with respect to their occupations was that of Howland Chamberlin who said, "My present occupation is an actor, and I find it deeply repugnant and profoundly un-American to be smeared, blacklisted, and strangled economically by my presence before this Committee" (for record references and further details, see App. B.3(c), p. 65). The Committee's aim to blacklist these Petitioners and Petitioners' objections thereto are also a matter of record (see App. B.3(d), p. 72).

All of Petitioners claimed the protection of the Fifth Amendment when they were questioned concerning their claimed membership in the Communist Party. Many, in addition, relied upon First Amendment and related grounds (App. B.3(e), p. 77). Questions other than membership in the Communist Party and completely unrelated to unlawful association, advocacy or conduct were also asked and Petitioners refused to answer them on similar grounds (App. B.3(f), p. 82).

The State of California has established a rule of law that persons may be barred by a monopolistic combination from any opportunity to pursue their established professions because of their refusals on constitutional grounds to answer questions *under the circumstances outlined*

above, where the purpose of the exclusion is to control political expression, unless the individuals can show existing or prospective specific contracts of employment. It is this rule of law which Petitioners assert violates their rights to due process and equal protection under the Fourteenth Amendment and also runs counter to the Federal Supremacy clause of the Constitution.

On the issues of arbitrary denial of the equal protection of the laws and deprivation of liberty and property without due process of law by the State courts, a brief summary of the proceedings below appears appropriate in this statement. Demurrers to the original complaint filed by petitioners in the Superior Court were sustained without opinion, but with leave to amend [R. 28]. A demurrer to the first amended complaint, the complaint herein, was filed on behalf of the respondent motion picture companies [R. 41] and sustained by the Superior Court without leave to amend. A separate demurrer to the same amended complaint was filed by the remaining three respondents [R. 60], and sustained, but with leave to amend [R. 55]. Petitioners elected to stand on the complaint and it was dismissed as to the remaining three respondents [R. 62].

The Superior Court, in its written opinion [R. 44] held that petitioners had standing to sue for an invasion of their right to work [R. 45], despite respondents' argument to the contrary, but that the burden of pleading lack of justification was upon petitioners [R. 50]; that the terms of the concerted agreement with respect to the invocation of constitutional privileges [R. 51] and the object of the agreement to limit the political beliefs and activities of employees in the industry and the content of motion pictures [R. 52] did not show a lack of justifica-

tion. With respect to the remaining three respondents, the court construed the complaint as alleging a purposeful interference by strangers with the possibility of business relations [R. 54], but held that the facts showing a tortious inducement of the refusal to enter into business relations had not been alleged [R. 54].

On appeal in the District Court of Appeal, petitioners urged that the judgments of dismissal deprived petitioners of their liberties and properties without due process of law in violation of the due process provisions of the Fourteenth Amendment (Opening Br. p. 7); that the monopolistic combination (*id.*, pp. 15-18) deprived petitioners of the fundamental right to work for a living under the Constitution (*id.*, pp. 18-21); that the combination, affected with a public interest, had arrogated powers denied to government itself (*id.*, pp. 21-24); that the exercise of constitutional privileges including the privilege against self-incrimination did not justify the concerted agreement herein (*id.*, pp. 24-34); that the respondents had invaded rights secured by the Constitution and laws of the United States (*id.*, pp. 28-29); and that the purpose of the conspiracy was patently violative of the freedoms of belief, speech and association (*id.*, pp. 36-44).

Respondents, on the other hand, urged the failure to allege the existence of a legally protected interest (Resp. Br. pp. 15-24), and then argued in the remainder of its brief (*id.*, pp. 25-79) that none of petitioners' constitutional arguments were meritorious and that the conduct of respondents had been justified as a matter of law.

In reply, petitioners asserted that respondents' argument on lack of standing to sue misconceived the constitutional issue that the complaint alleged a "permanent and serious injury" involving "total exclusion from a

chosen calling" (Reply Br. p. 22); that the right to earn a living is "a liberty protected by the Constitution" (*id.*, p. 37); that the petitioners had been deprived of their livelihoods because they had exercised lawful constitutional privileges (*id.*, pp. 38-46); that respondents were engaged in censorship of ideas forbidden to government itself (*id.*, p. 57); that respondents had failed to meet the constitutional issues raised in the case (*id.*, pp. 58-66); and that, if the judgments were permitted to stand, they would deprive petitioners "of their liberty and property without due process of law and the equal protection of the laws under both the state and federal Constitutions" (*id.*, p. 68).

The opinion of the District Court of Appeal [R. 63] disregarded the rulings of the Superior Court. The Court, for the first time since the inception of the proceedings, held that the complaint was insufficient because of the failure to allege an existing or prospective specific contract [R. 75]. The Court stated that "in view of our conclusion we do not reach other points argued by counsel" [R. 77]. The denial of leave to amend was affirmed [R. 77].

The District Court of Appeal held that it would judicially notice that the Communist Party is "a 'conspiratorial and revolutionary junta,' one of whose objectives is the overthrow of our government by force and violence" [R. 68], so that an inquiry at a legislative hearing concerning a person's past or present membership in the Communist Party, or the statement of a witness that a person has been such a member, has "nothing whatever to do with their political affiliations" [R. 68], and such latter allegations in a complaint can be disregarded and the aforesaid facts, judicially noted, substituted in their

place in determining the sufficiency of the complaint. This construction of the complaint, however, was not any part of the court's stated basis for its affirmance of the judgments of dismissal.

Following the decision of the District Court of Appeal below [R. 63], where for the first time respondents' argument on the necessity to plead a right based on a specific contract or prospect of one was accepted, petitioners filed their petition for rehearing. It was urged that "the holding of this court that appellants are without legal redress against the admitted wrongdoers who deprived appellants of their right to pursue their chosen avocations merely because appellants have not alleged the existence or probability of a contract of employment denies appellants the equal protection of the law, and deprives appellants of their liberty and property without due process of law in violation of the equal protection and due process provisions of the Fourteenth Amendement" (Pet. for Reh. p. 10).

The petition for hearing in the Supreme Court of the State of California raised all the aforementioned constitutional issues fully and at length.

Summary of Argument.

1. The ruling of the court below denying petitioners all relief solely because of the failure to allege the existence of a specific contract or the direct prospect of one deprivated petitioners of their liberty and property without due process of law. The constitutionally protected right to work includes freedom to choose and pursue a calling and to compete for employment on a basis of equality under the law. The concerted agreement and the conduct of respondents were deliberately calculated to curtail these rights by making their exercise dependent upon the surrender of constitutional guarantees.

The right to work includes as a valuable incident the standing with prospective employers, from which advantageous employment relationships may be expected. The liberty to choose and pursue a calling presupposes the freedom of employers to compete among themselves and freely to choose their employees. Respondents' monopolistic combination concededly made such uncoerced choice impossible.

The court below made protection of the right to choose, pursue and compete for employment dependent on the successful outcome of its exercise. But the gist of the wrongdoing alleged in the complaint is not the loss of an employment contract; it is the invasion of the right to follow a calling and to seek and obtain the free judgment of the employer as to whether or not he is willing to offer a contract of employment. Petitioners had achieved that status in the industry which afforded each of them a reasonable prospect of obtaining employment in the industry if the wrongful conduct of respondents had not intervened.

That petitioners have been denied their fundamental liberties by the action of the judicial arm of the State appears plain. Even if the availability of a legal remedy for relief from the wrongful invasion of fundamental liberties were to be deemed a mere privilege, the arbitrary denial of any remedy for the highly injurious wrong admittedly committed here was in violation of the Fourteenth Amendment. But the protection of constitutional rights by a state court is not a mere privilege, and a state may not sanction a total deprivation of the right to earn a livelihood by acting in such a manner as to deny all legal and equitable relief against the wrongdoers.

Nor is this a case solely of "private conduct." Comparably with *Marsh v. Alabama*, 326 U. S. 501, these respondents by their monopolistic control of all employment opportunities in the industry and by their action in concerted agreement with members of the legislative committee, are virtually exercising governmental powers. The combination has been allowed, pursuant to the judicially established law of the state, to assume the powers of a legisla ..e, the functions of the judiciary, and the duties of law enforcement; it exercises these powers to undermine constitutional rights, liberties and privileges, action forbidden under the Constitution to Government itself. The state court, by requiring pleading and proof of the loss of a specific contract, sanctions the conduct of a monopolistic combine whose own wrongdoing has made it impossible for persons to obtain contracts. It arbitrarily deprived petitioners of all remedies legal and equitable for the destruction of a constitutionally protected property right and liberty thus denying them due process of law.

2. The court below arbitrarily denied petitioners the protection of freedom of speech and association by refusing any relief from the combination which conditioned the right to work on the surrender of these fundamental liberties. The purpose of respondents' concerted agreement was to deprive persons who exercised their constitutional privileges before the Committee, of their chosen callings in the industry, all to the end that the political beliefs and activities of employees, and the content of motion pictures, should conform to standards promulgated by the Committee.

Freedom of association is an indispensable condition of the exercise of freedom of speech and assembly. The dissenting voice is stilled by the elimination of free political association. Censorship breeds conformity. When the state establishes a principle of law, regardless of the department of the government involved or of the procedural process through which the law is declared and that principle limits the right to dissent, then the protection to which these fundamental liberties are entitled under the due process clause is denied.

The court below not only sanctioned the invasion of the basic freedoms of these petitioners, but the effect of its ruling was to abridge freedom of expression in an entire vital area of communication, the fields of art, culture and ideas. No right of an individual producer of motion pictures acting alone is here involved. The effect of the conspiracy alleged in this complaint is to preclude individual decisions reached in the process of competition for the most desirable product. Competition in ideas is stifled, and conformity and self-censorship become the rule.

3. The right of witnesses freely to claim their constitutional privileges in a Congressional legislative inquiry is one secured against individual invasion by the Constitution and the laws of the United States. Here, despite respondents' admission of wrongdoing, the great importance of preserving inviolate the privileges afforded by the First and Fifth Amendments and the duty of the state court under the supremacy clause of the Constitution to protect the exercise of these federally guaranteed rights, the state court denied all redress.

4. The ruling of the court below arbitrarily denied petitioners the equal protection of the laws in violation of the Fourteenth Amendment. It is unreasonable and capricious to grant relief to a person who has a specific contract or the reasonable prospect of one, but to grant no relief to one who has been permanently barred by a monopolistic combination from ever competing for a contract of employment in an entire industry. It is unreasonable to grant immunity to the wrongdoers here, while subjecting to liability those who induce a breach of a specific contract. What the state has done is to afford protection to lesser rights while refusing it for more substantial ones and, at the same time, subjecting the minor wrongdoer to liability while totally immunizing the major wrongdoer.

In dismissing the complaint, the court below refused to give petitioners the benefit of established state law which would have required a ruling favorable to them, for the state ordinarily places upon the wrongdoer the risk of uncertainty in the proof of damages which his own wrong created; it permits the recovery of damages for injury to the right to work, without regard to the

existence of a contract, or the prospect of one; it permits damages for loss of good will even without the existence of specific contracts or prospects of one; and it permits at least nominal damages, even though no actual damages can be proved. The state also grants equitable relief for invasions of property rights, holding that an injury occurs as a matter of law and that an injunction will issue against continuous wrongdoing, whether damages are ascertainable or not. Petitioners were arbitrarily placed in a special classification to which was denied the benefit of all of these rules of law.

In stating, as a matter of judicial notice, that the allegations in the complaint had nothing whatever to do with petitioners' political affiliations, associations or beliefs, but concerned membership in a "conspiratorial and revolutionary junta," the court below acted arbitrarily and capriciously. The state court erroneously relied on a concurring opinion in *American Communications Association v. Douds*, 339 U. S. 382. This court has never held that the entire Communist Party is a conspiracy to overthrow forcibly the Government, and it is arbitrary to take judicial notice of that which can only be established by proof of individual wrongdoing. Nor was it lawful to infer criminal conduct from invocation of First and Fifth Amendment privileges.

By classifying petitioners through this process of judicial notice as members of a revolutionary conspiracy, the state court withdrew from them the protection of California statutes prohibiting employers from controlling or coercing the political activities and affiliations of employees. Thus petitioners were denied the equal protection of the laws.

5. The attempt of the respondents to justify their tortious invasion of petitioners' fundamental rights as a matter of law is without basis in view of the posture of the proceedings and the constitutional protections afforded petitioners. The argument that respondents had merely combined for economic self-interest disregards the allegations in the complaint, admitted by demurrer, and relies on conjectural inferences which, if pertinent at all in the light of the requirements of the Constitution, are properly subject to proof directed to a trier of facts. The attempt to cast the holding of the court below as merely a choice of competing state policies ignores the fact that one choice leads to the denial of constitutional guarantees.

6. The dismissal of the complaint as to the remaining three respondents upon the same ground equally deprived petitioners of rights under the Constitution. Neither the members of the legislative committee, nor their investigator, were acting within the scope of their jurisdiction, when individually and in their official capacities they admittedly entered into the conspiracy alleged in the complaint and actively furthered its objectives.

7. The facts and principles of law showing violations of the Fourteenth Amendment and of the supremacy clause of Article VI of the Constitution simultaneously establish the jurisdiction of this Court.

ARGUMENT.

I.

The State Court's Denial of All Remedies for the Admitted Wrongful Invasion of Petitioners' Freedom to Pursue Their Chosen Callings Deprived Petitioners of Their Liberty and Property Without Due Process of Law in Violation of the Due Process Provisions of the Fourteenth Amendment.

A. This Court has uniformly held that the right to pursue one's business, calling, trade, or occupation is a liberty which the law protects against unjustifiable or wrongful invasion, deprivation or abridgement, for everyone ordinarily has a right to enjoy the fruits and advantages of his own enterprise, industry and skill, and to full freedom in disposing of his own labor according to his own will. "The theory upon which our political institutions rest is, that all men have certain inalienable rights —that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all vocations, all honors, all positions, are alike open to everyone, and that in the protection of these rights all are equal before the law." *Cummings v. Missouri*, 4 Wall. (U. S.) 277, 321.

The right to work is a large ingredient in the civil liberty of the citizen. Cut off the right of the citizen to choose his vocation, the right to earn his bread by the profession which he has learned, and the very right to live as a dignified human being is endangered. *Butchers' Union S. & L. L. Co. v. Crescent City L. L. & S. Co.*, 111 U. S. 746, 754-766. "For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of

life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." *Yick Wo v. Hopkins*, 118 U. S. 356, 370. See also, *Allgeyer v. Louisiana*, 165 U. S. 578, 589; *Smith v. Texas*, 233 U. S. 630, 636; *Truax v. Raich*, 239 U. S. 33, 42; and *Meyer v. Nebraska*, 262 U. S. 390, 399. That this essential freedom is firmly imbedded in our constitutional system is emphasized by the recent decisions of this Court, upholding in a variety of situations the liberty to follow a chosen profession or avocation: *Takahashi v. Fish Comm'n*, 334 U. S. 410; *Wieman v. Updegraff*, 344 U. S. 183; *Slochower v. Board of Higher Education*, 350 U. S. 551; *Schware v. Board of Bar Examiners*, 353 U. S. 232; *Konigsberg v. State Bar*, 353 U. S. 252. See also, *Parker v. Lester*, 227 F. 2d 708, 713, 717 (C. A. 9, 1955).

The state court held that no "legally protected interest of plaintiffs has been interfered with" [R. 75] because no tortious invasion of a contract right had been alleged. Since this was the sole stated ground of the decision of the court below, it becomes important to analyze the legal ingredients contained in the "right to work" as contrasted with the right "in a specific contract."

The first interest included in the right to work is the freedom *to choose* an occupation or profession which a person desires to pursue. As the Court stated in *Allgeyer v. Louisiana*, 165 U. S. 578, "the freedom of adopting" and following the occupation which he prefers is "a material part of the liberty of the citizen." *Supra*, at 590. *Truax v. Raich*, 239 U. S. 33, 38. Yet, in the posture of these proceedings, the respondents by their demurrer concede that the terms of their concerted agreement, and

the means used to make that concerted agreement effective, are deliberately calculated to curtail petitioners' freedom of choice. For if petitioners are to continue in the professions "to which they have devoted a major part of their entire lives and energies" [R. 10, 36], they must surrender their First and Fifth Amendment rights, as well as rights guaranted to them by the laws of the United States (2 U. S. C. 192; see Appendix A). The petitioners are given no choice, "except a choice between the rock and the whirlpool"—an option to forego privileges which are vital to their security and freedom as well as that of the public, or loss of opportunity to earn a living. *Frost Trucking Co. v. R. R. Commission*, 271 U. S. 583, 593. The admitted conduct of respondent is "necessarily calculated to curtail the free exercise of the right thus secured." *Terral v. Burke Construction Co.*, 257 U. S. 529, 532. The petitioners cannot retain the opportunity of earning a livelihood in their established vocations except by "purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution." *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, 439.

Included in the right to work is not only the liberty of *choice* of employment, but the right *to pursue* a calling. As was stated in *Butchers' Union S. & L. L. Co. v. Crescent City L. L. & S. Co.*, 111 U. S. 746, 763: "... the grant to a favored few of a monopoly in any of these common callings is necessarily an outrage upon the liberty of the citizen as exhibited in one of its most important aspects—the liberty of pursuit." The general rule "undoubtedly is, that any person is at liberty to pursue any lawful calling, and to do so in his own way, not encroaching upon the rights of others. This

general right cannot be taken away." Cooley, *Constitutional Limitations* (8th ed., 1927), Vol. 2, p. 1341.

This pervasive principle runs through all the decisions dealing with the right to work. The right to acquire property "by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired." *International News Service v. Associated Press*, 248 U. S. 215, 236. "The plaintiffs here are citizens of the United States and the rights and liberties which they assert relate not to any public employment present or prospective, but to their right to pursue their chosen vocations as merchant seamen." *Parker v. Lester*, 227 F. 2d 708, 717 (C. A. 9, 1955). ". . . the notion is intolerable that a man should be protected by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his efforts to acquire it." *Brennan v. United Hatters of North America*, 73 N. J. L. 729, 742, 65 Atl. 165, 171.

The right to choose and the right to pursue a calling together sum up the right to compete on a basis of equality under the law. Ours is a competitive system. Deprive a man of the opportunity to compete and the single most essential economic guarantee of the system, essential to life itself, is denied him. "Free enterprise is a basic concept of our economy but contained therein is the corollary of free and fair competition." *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 365 (C. A. 9, 1955). It is for this reason that this Court has said that ". . . the right to work at a given occupation or particular calling free from injury, oppression, or interference by individual citizens," (let alone monopolistic com-

bines), is "a natural or inalienable right" which the state has the duty to protect. *Hodges v. United States*, 203 U. S. 1, 18. Here the respondents by concerted action totally excluded petitioners from their established occupations in the motion picture industry.[1] It is conceded that by reason of such conduct petitioners would "henceforth find it impossible to obtain employment in the profession to which they have devoted a major part of their entire lives and energies" [R. 36].

The respondents were under a duty not to interfere with petitioners' right to pursue their callings. Yet, respondents admit that they, monopolizing all employment opportunities in the industry, bound themselves to exclude petitioners from the industry, coerced all other employers to do the same, and circulated blacklists "with the direction and intent" that petitioners be excluded from the industry. The respondents wilfully drew a cordon about the entire industry, policed it, and effectively throttled any attempt by petitioners to pursue their chosen callings. It is difficult to envision a more direct and immediate violation of a legally protected interest than is thus presented by the proceedings here.

Moreover, in addition to liberty of choice and liberty of pursuit, the right to work includes the full enjoyment of the citizen's liberty to have all possible employers left free to employ him or not as they may voluntarily elect. He is entitled to compete for employment in a

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[1] The court below agreed that the complaint reads "Plaintiff Wilson *is* by profession a motion picture writer" [R. 64] (emphasis supplied). The allegation of present *status* was made by each petitioner. It was clear, therefore, that petitioners at the time of the suit were members of their respective professions and vocations.

market in which employers are free to compete for his services. This freedom of the employer is plainly violated when those who monopolize employment opportunities in an industry bind themselves not to exercise a free choice, and then coerce the other employers by malicious inducement and blacklists to refrain from exercising their free choice as well. The gist of the wrongdoing in such case is not the loss of an employment contract, but interference with the right to obtain the free judgment of the employer as to whether or not he will offer a contract of employment.

The recognition of the right which one man thus has in the freedom of another finds its roots in long-established precedents. See, *Quinn v. Leatham* (1901), A. C. (Eng.) 495, 534, 535.[2] This Court has stated: "The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable

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[2]"He [the plaintiff] had the ordinary rights of a British subject. He was at liberty to earn his own living in his own way, provided he did not violate some special law prohibiting him from so doing, and provided he did not infringe the rights of other people. This liberty involved liberty to deal with other persons who were willing to deal with him. This liberty is a right recognized by law; its correlative is the general duty of every one not to prevent the free exercise of this liberty, except so far as his own liberty of action may justify him in so doing. *But a person's liberty or right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so.* Any interference with their liberty to deal with him affects him. . . . . Further, the principle involved in it cannot be confined to inducements to break contracts of service, nor indeed to inducements to break contracts. The principle which underlies the decision reaches all wrongful acts done intentionally to damage a particular individual and actually damaging him." (Emphasis supplied.) *Aikens v. Wisconsin*, 195 U. S. 194.

although the employment is at will," *Truax v. Raich*, 239 U. S. 33, 38. In asserting his interest in the employer's freedom, the employee is not claiming for himself the rights of others or seeking redress for damages done to others. It is the employee who is wronged through this restriction upon the liberty of the employer; his injury is the direct consequence of the employer's loss of independence. When the employer "no longer uses his own judgment, but, by entering into the combination, agrees to be bound by its decree" (*Barr v. Essex Trades Council*, 53 N. J. Eq. 101, 123, cited in *International News Service*, 248 U. S. 215, 237), a person immediately affected by this loss of freedom is the one pursuing employment. See also, *Joint Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 154; *Barrows v. Jackson*, 346 U. S. 249, 257; *Pierce v. Society of Sisters*, 268 U. S. 510, 535; *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229, 251.

Moreover, as a protection for the right to work, the law does more than protect the liberty of choice, pursuit and a free market. It protects against any wrongful invasion of a prospective advantageous relationship, even if that prospective relationship is predicated exclusively upon the future good will of prospective employers, employees or general customers in an industry. Here petitioners had admittedly been employed in the motion picture industry from five to twenty-five years. They had a background of experience, reputation and esteem in the industry, as respondents well knew [R. 64]. The complaint makes clear that they had a "reasonable prospect" of obtaining employment in the industry if the wrongful conduct of respondents had not intervened. "The pecuniary value of such reasonable probabilities is incal-

culably great, and is recognized by the law in a variety of relations." *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229, 252. See also, *Bigelow v. RKO Radio Pictures*, 327 U. S. 251, 266; *Story Parchment Co. v. Patterson Parchment Paper Co.*, 282 U. S. 555, 564.

The fact is that the constitutionally protected "right to work" comprises a bundle of interests—choice pursuit, free market, and prospective advantageous dealings predicated upon prior accomplishment and relationships. It was these interests which the complaint plainly pleaded and which the respondents admittedly invaded. In denying all legal and equitable relief for this "wrongful and injurious invasion" of petitioners' rights and interests, the state court sanctioned for all practical purposes the deprivation of petitioners' liberty and property without due process of law.

What the state court did down below was to make protection of the right to work dependent on the successful culmination of the exercise of that right. But liberty to pursue an occupation, as in the case of so many other freedoms, cannot be independent for its free exercise on whether or not its objective is finally obtained. The exercise of the right to work is a means to an end—the contract of employment. To that extent, the right to work and the right in a contract of employment have a connection. But while a tortious invasion may occur to both "means" and "end" at one and the same time, still the invasion of one or the other may occur separately and, where they do, they are separately remediable. *Cf., Butchers' Union S. & L. L. Co. v. Crescent City L. L. & S. Co.*, 111 U. S. 746; *Truax v. Raich*, 239 U. S. 33; *Angle v. Chicago, St. P., El. Ry.*, 151 U. S. 1.

The state cases relied upon by the court below [R. 70] did not involve the question of an invasion of the fundamental right to work. They dealt solely with inducement of breaches of specific contract or specific prospective advantages. In none of these cases were the parties claiming that their liberty of choice of business was restricted, or that they had been completely excluded from the industry, or that the free judgment of their prospective customer had been initially coerced or restricted. All that they claimed was that the judgment of one particular customer had been freely exercised, or would have been freely exercised, in plaintiffs' behalf if defendants had not wrongfully steered that free judgment in defendants' favor. What the plaintiffs failed to plead or prove in those cases was the facts to substantiate such claims.

Thus, in *Campbell v. Rayburn*, 129 Cal. App. 2d 232, 276 P. 2d 671, the only California case cited by the court, the gist of the complaint was solely that defendant had wrongfully induced two persons in Palm Springs not to rent office space to plaintiff. The principal reliance of the court below upon this decision indicates the infirmity of the state court's action. In upholding a dismissal of the compaint in the cited case, the court stated that no facts had been alleged, among things, showing "the availability or lack of accommodations other than those referred to." *Supra*, at p. 234. The only right asserted was a right in a particular office space. There was no claim of a monopoly controlling all office space conspiring to totally exclude the plaintiff from securing any space anywhere. Since there is ordinarily no legally protected right in a particular office space, the plaintiff failed to recover in his suit for damages when he failed

to allege facts showing either that he had a lease for the premises or the reasonable prospect of one. Whatever defendant had done, plaintiff had not shown how any interest of his had been invaded by defendant's conduct. Clearly, the facts in the two cases do not bring them within the same area of legal rights, nor could the legal and constitutional consequences arising from the dismissal of the complaint herein flow from the dismissal in the *Campbell* case. The other state cases cited by the court below are in the same tenor and are equally inapplicable here.

The court below disregarded that the fact of injury to a fundamental right was placed in the complaint. In holding that petitioners were bound to plead the reasonable prospect of *a specific contract*, the court confused the problem of satisfactory proof of loss with the problems of liability. The crux of the petitioners' complaint was respondents' unjustifiable interference with their right to pursue their lawful callings, and to reap the earnings of their industry, their experience, their reputation and esteem. To what extent petitioners were thus injured was a matter for the trier of the facts to decide, and the complaint made perfectly clear that it was possible for the trier to estimate both the value of what petitioners had lost and what they would have received if respondents had not brought the curtain down around the industry to the exclusion of petitioners. See, *Truax v. Corrigan*, 257 U. S. 312, 327; *Louis Kammon, Inc. v. Flink*, 113 N. J. L. 582, 75 Atl. 62, 68; *Godin v. Niebhur*, 236 Mass. 350, 128 N. E. 406, 407; *Doremus v. Hennessay*, 176 Ill. 608, 52 N. E. 924, 925-6; *Meadowmoor Dairies v. Milk Wagon Drivers' Union*, 371 Ill. 377, 21 N. E. 2d 308; Cooley, *Torts*, (4th ed.), Vol. 2. Sec.

230, pp. 196-7: Prosser, *Torts* (1955), Sec. 107, pp. 745-8; *Restatement of Torts*, Sec. 766, p. 52; 86 C. J. S., *Torts*, Sec. 43, p. 955.

Finally, the court below, restricting its ruling to the requirement that a right in a specific contract be pleaded and proved, overlooked the fact that petitioners were also seeking equitable relief from the irreparable injury being done them by the continuous wrongdoing of respondents, wholly apart from the question of the amount of compensatory damages due them. "Where irreparable injury is threatened, or the damage be of such a nature that it cannot be adequately compensated by an action at law, or is such as, from its continuance, to occasion a constantly recurring grievance, the party is not ousted of his remedy by injunction." *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1, 12. The denial, even of injunctive relief by the state from the admitted wrongdoing of respondents thus completely destroyed petitioners' fundamental right to work in their chosen occupations. But a State, acting through its judiciary, may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy. *Brinkerhoff-Faris T. & S. Co. v. Hill*, 281 U. S. 673, 682. See, *Truax v. Raich*, 239 U. S. 33, 38; *International News Service v. Associated Press*, 248 U. S. 215, 236.

B. Under the circumstances of this case, the state, by dismissing the complaint, has denied petitioners the liberty, encompassed by the Fourteenth Amendment, to pursue their chosen callings. The conduct of the Motion Picture Producer Respondents, barring petitioners access to an entire industry because of petitioners' defense of their First Amendment and Fifth Amendment rights for

the purpose of restricting free expression in the entire industry, cannot be relegated simply to the sphere of "private conduct." Neither surface appearances nor purely technical considerations should be permitted to obscure reality. The Constitution demands examination of the essence of things. For "the Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name." *Cummings v. Missouri*, 4 Wall. 277, 325. See also, *Loubriel v. United States*, 9 F. 2d 807, 808; *United States v. Bryan*, 339 U. S. 323, 334-5. In a changing society the emergence of new forms is inevitable. To obscure the substance for which forms are mere vehicles would substitute the naked letter of our fundamental law for its spirit and purpose. *Cf.*, Paul J. Liacos, "Rights of Witnesses Before Congressional Committees," 33 B. U. L. R. 337, 386; *Sweezy v. New Hampshire*, 354 U. S. 234, 255, 267, Mr. Justice Frankfurter, whom Mr. Justice Harlan joins, concurring in the result; *United States v. Classic*, 313 U. S. 299.

In this case, the form of suppression is relatively new, only because of the character of the members of the conspiracy and the nature and extent of their wrongdoing. It is a composite of the conduct of a Congressional Committee and of a group of individuals and corporations controlling an entire major industry acting in concert with the Committee. The novelty of the Committee participation is discussed in a recent decision. "In the decade following World War II, there appeared a new kind of congressional inquiry unknown in prior periods of American history. Principally this was the result of the various investigations into the threat of subversion of the United States Government, but other subjects of congressional interest also contributed to the changed

scene. This new phase of legislative inquiry involved a broad-scale intrusion into the lives and affairs of private citizens. It brought before the courts novel questions of the appropriate limits of congressional inquiry." *Watkins v. United States*, 354 U. S. 178, 195. As the opinion of Mr. Chief Justice Warren notes, these "novel questions" concerned "the application of the Bill of Rights as a restraint upon the assertion of governmental power in this form" (345 U. S. at 195.) A variation of the same problem is presented here.

It is contended, however, that the power and duty of this Court rests upon the Fourteenth Amendment which is a limitation upon the power of the state, not upon the conduct of private individuals or groups; that the state is not the culprit here; that it has merely refused to intervene to prevent abridgment of freedoms flowing from non-governmental sources. To this contention there are several answers.

First, the state has acted. Its dismissal of the complaint in this case was a denial of access to courts of the state. Even if the right to procure relief from courts of law were a mere privilege, the denial of that privilege in this case could not be reconciled with the commands of the Fourtenth Amendment. The right to exclude altogether does not include the right to do so for a reason or in a manner which abridges constitutional rights. Thus it has been held that the power of the state completely to exclude telegraph poles from its streets may not be exercised in such a manner as to regulate interstate commerce; *Western Union Telegraph Co. v. Foster*, 247 U. S. 105, 114; *Cf. Southern Railway Co. v. Greene*, 216 U. S. 400; nor, assuming the power of the state to exclude completely corporations from its borders, may

it do so where the consequence is the denial of the corporation's constitutional rights. *Fidelity & Deposit Co. v. Tafoya*, 270 U. S. 426, 434-5.

As was stated in the dissenting opinions of Justices Holmes and Brandeis in *Milwaukee Publishing Co. v. Burleson*, 255 U. S. 407, 430-1, 437, the United States may "give up the post office when it sees fit" but it may not operate that institution in such a manner as to impinge upon freedom of speech and of the press. At a later date this Court cited those dissents in support of its view: "But grave constitutional questions are immediately raised once it is said that the use of the mails is a privilege which may be extended or withheld on any grounds whatsoever." *Hannegan v. Esquire, Inc.*, 327 U. S. 146, 156.

So too, the concept that because government employment is a privilege, the state is free to impose thereon any conditions it deems appropriate has been discarded. No longer may a state exclude from employment those who refuse to take an oath which indiscriminately intermingles innocent with knowingly evil activity. *Wieman v. Updegraff*, 344 U. S. 183, 191. Even though Slochower did not have "a constitutional right" to be employed as a teacher, the Fourteenth Amendment protected him against arbitrary state action predicated upon an unreasonable condition and resulting in the denial of employment to him. *Slochower v. Board of Education of New York*, 350 U. S. 551, 555, 559. *Cf.*, "Inquiry Into Political Activity," 65 Y. L. J. 1172.

Assuming therefore that resort to the courts for protection of constitutional rights is a privilege, it does not follow that the refusal of the Court to provide any remedy

raises no constitutional question. An arbitrary denial of all relief runs afoul the due process clause just as would a similar refusal of other state privileges. *Smith v. Cahoon*, 283 U. S. 553; *Railway Express Agency v. New York*, 336 U. S. 106; *Cf. Toomer v. Witsell*, 334 U. S. 385; *Wheeling Steel Corp. v. Glander*, 337 U. S. 562; *Philips Petroleum Co. v. Jenkins*, 297 U. S. 629; *Power Co. v. Saunders*, 274 U. S. 490; *Hanover Insurance Co. v. Carr*, 272 U. S. 494.

The fact that state action is negative rather than affirmative—a denial of benefits rather than the direct imposition of punishment—must not be allowed to becloud the issue. "'Negative' and 'affirmative,' in the context of these problems, is as unilluminating and mischief-making a distinction as the outmoded line between 'nonfeasance' and 'misfeasance.'" *Rochester Tel. Corp. v. United States*, 307 U. S. 125, 141-142. The state may not conduct its affairs in such a manner as to deny to its citizens and residents the freedoms the Constitution guarantees. The use of the taxing power to inhibit freedom of the press is not condemned because the form of state action is affirmative. The withholding of subsidies upon conditions calculated to control the content of the press would be no less a denial of due process. Either method must be stricken down because each achieves the same end—a diminution of liberty of communication.

The refusal of the state to protect the right of individuals to compete for work in an industry from which they have been totally excluded by a monopolistic combine has no impact substantially different from that falling upon individuals excluded from government em-

ployment. In either instance if the individuals' opportunity of employment has been denied because of their exercise of political rights, the state action undermines those rights. Such exercise of governmental powers is a most effective means of persuading individuals to mould their beliefs, utterances and associations in a fashion which will not jeopardize their means of livelihood. By dismissing the complaint in this case, the California courts cast their weight upon the side of suppression of petitioners' liberties. This the Fourteenth Amendment to the Constitution forbids.

Second, the protection of constitutional rights by state courts is not a mere privilege. In this area the state cannot, even if it would, be a neutral. Whether it grants or withholds its aid, it affects one way or the other the civil liberties of its citizens. The police officer who stands by while an unprovoked assault is committed on another because of his religious views is guilty of a breach of duty owed by the state, the character of which may be aggravated but is not essentially changed if he joins in the assault. *Catlette v. United States*, 132 F. 2d 902, 907 (C. A. 4, 1943). Here, there has been no physical assault upon petitioners which the state has abetted by the withdrawal of its protection. Rather there has been an economic assault, by a group capable of depriving petitioners of their means of earning a livelihood. When the state announces that it affords no protection against such violence, it thereby sanctions what has already happened and invites its repetition. This breach of the duty of the state to protect constitutional rights of its citizens is violative of the Fourteenth Amendment.

Third, the view that the conduct of the motion picture producer defendants is to be treated as purely private

conduct is an obfuscation of underlying reality. The right to control entry into or competition in a profession, occupation or industry does not belong to private individuals or groups. To the extent that control is permitted within this area, it falls within the province of the state. If private entities exert this power they should not be allowed to defend as private action the power of the state which they have usurped. Nor may the state take the position of a mere observer while such usurpation of its powers is utilized as a means of abridging constitutional freedoms. The time is past when a dogmatic concept of private property may be allowed to stand between the people and their constitutional rights.

This principle is perhaps most clearly enunicated in *Marsh v. Alabama*, 326 U. S. 501. There a member of Jehovah's Witnesses attempted to distribute religious literature within the confines of a company town and was convicted under the Alabama law for the crime of remaining on the premises of another after having been warned not to do so. The court held that this conviction was a violation of the First Amendment guarantees of freedom of press and religion. The case is bottomed upon the premise that where private companies enter an area of public use, their private property may not be controlled in such a way as to interfere with the constitutional rights of individuals. Even mere acquiescence by the state in such deprivation of constitutional rights by private corporations may be a denial of due process. A state may not *permit* a corporation to govern a community of citizens in such a manner as to restrict their fundamental liberties.

Here it is petitioners' contention that the state has established a rule of law permitting private employers to

govern an entire industry in such a manner as to deprive citizens of their fundamental liberties. As the Court in the *Marsh* case said: "The managers appointed by the corporation cannot curtail the liberty of press and religion of these people consistently with the purposes of the constitutional guarantees. . . . . ." 326 U. S. at 508. Nor may the managers of the corporations which control the motion picture industry curtail either the right to work or the liberty of press and of speech of the petitioners in this case. The state in this case may no more permit such a combination to abridge the constitutional liberties of its citizens than it could allow the corporation in the *Marsh* case to do so, notwithstanding the claim of immunity of private business. "In our view the circumstances that the property rights to the premises where the deprivation of liberty here involved, took place, were held by others than the public, is not sufficient to justify the state's *permitting* a corporation to govern a community of citizens so as to restrict their fundamental liberties. . . ." (Emphasis added; 326 U. S. at 509.) The motion picture industry should not be permitted by the State of California to govern that industry so as to restrict the fundamental liberties of citizens having or desiring employment therein.

In a concurring opinion in *Marsh*, Mr. Justice Frankfurter stated that a company-owned town gives rise to a network of property relations but it is nevertheless a town and that "these community aspects are decisive in adjusting the relations now before us, and more particularly in adjudicating the clash of freedoms which the Bill of Rights was designed to resolve—the freedom of the community to regulate its life and the freedom of the individual to exercise his religion and disseminate

his ideas." Title to property, he said, cannot control issues of individual liberties "which arise precisely because a company town is a town as well as a congeries of property relations." 326 U. S. at 510. The group of motion picture industry employers by their control of the entire industry are exercising something akin to governmental powers. Under these circumstances the mere fact that they are private employers cannot determine the issues relating to the freedoms secured by the Constitution which the case presents.

The proposition that private property may be used in such a manner or for such a purpose that a denial of public access thereto or enjoyment thereof for certain purposes may be treated as tantamount to state action did not originate with the *Marsh* case. This principle had been long applied to such "things of public concern" as privately-owned roads, railroads, bridges, ferries, and other means or avenues of locomation. *Commissioner of Dodge County v. Chandler*, 96 U. S. 205, 208.[3]

> ". . . Looking, then, to the common law, from whence came the right which the constitution protects, we find that when private property is 'affected with a public interest, it ceases to be juris privati only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise De

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[3]It has been held that a statute may properly be construed to require an employer to permit his employees to use his property for certain union purposes at certain times and under certain conditions. *Republic Aviation Corp. v. N.L.R.B.*, 324 U. S. 793. If an individual employer may not use his own property in such a way as to violate the Board's interpretation of the National Labor Relations Act, is it not even clearer that a group of employers controlling all employment in an industry may not use their power of employment in such a way as to violate the constitutional rights of those seeking employment with them?

> Portibus Maris, 1 Harg. L. Tr., 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. . . . ." *Munn v. Illinois*, 94 U. S. 113, 126.

Of course, one can distinguish between the right of a state to regulate and its refusal to interfere with the manner in which private business operates. But the right of a state to act can exist only because of the fact that it has a duty to protect the legitimate interests of its citizens. It exercises the right in order to fulfill the duty. Where a monopoly exerts its power in such a manner as to deprive citizens of their constitutional rights, the same basic legal theory which affords the state the right to regulate property affected with a public interest imposes upon it the duty to exercise that power wherever necessary in order to protect the constitutional rights of its citizens.

Where a group of employers control all employment opportunities in an industry, they possess the power to determine who may work in the industry and earn his livelihood therein and on what terms. The right to work in the industry is dependent upon the will of those who dominate the industry. Opportunity to compete for employment in a major industry is as much a matter of public concern as is access to the means of locomotion. Those enjoying a monopoly in an industry possess no greater right to condition access thereto upon the surrender of constitutional rights, privileges and liberties than do the private owners of bridges or railroads to condition use of their facilities upon such a forfeiture.

". . . and certainly the corporation can no more deprive people of freedom of press and religion than it can discriminate against commerce." *Marsh v. Alabama, supra,* 326 U. S. at 507.

It is a facile generalization to maintain that what one may do lawfully, all may do in combination. When a combination takes on the form of a conspiracy, when it coerces its members and deprives them of the exercise of their free judgment, when pursuant to the conspiracy the members commit overt acts intended to bring the conspiracy into fruition, when the object and intent of the conspiracy is to injure persons in the exercise of their fundamental rights, when the very terms of the conspiracy are contrary to the letter and spirit of the fundamental law, and when the ultimate object of the combination is to attain results hurtful to the public and individuals, it is impossible to justify such conduct by pointing to what one individual could do if he were free from the coercive control of such a combination. With respect to unlawful combinations, the circumstances of the particular case as presented by the record must be appraised if fundamental rights are to be protected. *Aikens v. Wisconsin,* 195 U. S. 194, 205.

The rule has been repeatedly iterated in diverse situations. "It is familiar doctrine," stated this Court in *United States v. United States Gypsum Co.,* 333 U. S. 364, 401, "that lawful acts may become unlawful when taken in concert." "An act harmless when done by one may become a public wrong when done by many, acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public, or to the individual against whom the concerted action is diretced." *Grenada Lumber Co. v.*

Mississippi, 217 U. S. 433, 440. See also, *Steele v. Bulova Watch Co.*, 344 U. S. 280, 287; *Binderup v. Pathe Exchange*, 263 U. S. 291, 312; *Swift & Co. v. United States*, 196 U. S. 375, 396; *Dietrich v. Cape Brewery & Ice Co.*, 315 Mo. 507, 521, 286 S. W. 38, 43.

The fact is that this combination is not a social club or fraternal association. It admittedly has obtained a monopoly of all employment opportunities in the motion picture industry. It is an industry affected with a public interest, as has been stated, and it has corresponding obligations. See, Note, *Monopolies, the Motion Picture Industry*, 15 Univ. of Det. L. J. 178 (1952); Marcus, *Antitrust Laws and The Right to Know*, 24 Ind. L. J. 513, 533 (1949); McDonough and Winslow, *The Motion Picure Industry*, 1 Sanf. L. Rev. 385 (1949); *United States v. Paramount Pictures, Inc.*, 334 U. S. 131. This combination is not merely choosing employees as a club would decide what members it desires. What this combination does affects the fundamental right to work for a living. It is for this reason that employers in the industry must be free to make their own decisions with respect to their employees. The vice of this monopolistic combination lies in the coercion, intimidation and economic pressure which lies in such a group, not only as against these petitioners and all others similarly situated, but also towards its own more reluctant members. Here the damage arises not from the unwillingness of one employer to offer a profitable employment; here the damage is far gerater because the combination has made it impossible to seek out any or all employers. "The evil is in the combination. Without it the several groups of coal-carrying and coal-producing companies have the power and motive to compete. That each may for itself advance the price of coal or cut down the production, is true. But

in the power which each other group would have to compete would be found a corrective." *United States v. Reading Co.*, 226 U. S. 324, 353. Accordingly, where such factors of coercion, monopoly, and economic pressure as are present in the case herein are involved, with total deprivation of the right to work as a consequence, liability plainly exists. See, Section 765 of the *Restatement of Torts*, comment (a).

This combination, affected as it is with a public interest, has received the sanction of the State to assume the powers of a legislature, the functions of the judiciary and the duties of law enforcement. This combination purports to regulate, limit and control the exercise of the rights of speech, belief, opinion and association, and the content of art and literature; it purports to regulate the attendance and testimony of witnesses before a federal tribunal; and it requires as a condition of such attendance that constitutional privileges as socially significant as the First and Fifth Amendments to the Constitution of the United States be surrendered. "Appellants are not law enforcement agencies; they are charged with no duties of investigating or prosecuting, to say nothing of convicting and punishing . . . their conduct in the present case differs not at all from that of any other extra-governmental agency which assumes power to challenge alleged wrongdoing by taking the law into its own hands . . . and although persons who reason superficially concerning such matters may find justification for extra-legal action to secure what seems to them desirable ends: this is not the American way of life." *American Medical Ass'n v. United States*, 130 F. 2d 233, 249 (C. A. D. C., 1942), aff'd 317 U. S. 519. ". . . the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of in-

terstate commerce, and provides extra-judicial tribunals for determination of violations, and thus 'trenches upon the power of the national legislature and violates the statute.'" *Fashion Guild v. Federal Trade Commission*, 312 U. S. 457, 465. See also, *Eastern States Lumber Ass'n v. United States*, 234 U. S. 600, 613; *United States v. United States Gypsum Co.*, 333 U. S. 364, 400; *United States v. Motion Picture Patents Co.*, 225 Fed. 800, 808 (D. C. E. D. Pa., 1915).

Nor should it be overlooked that in thus assuming governmental powers with the sanction of the State, this combination is purporting to do what is forbidden to government itself. See, *Truax v. Raich*, 239 U. S. 33; *Wieman v. Updegraff*, 344 U. S. 183; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123; *Joseph Burnstyn, Inc. v. Wilson*, 343 U. S. 495; *Quinn v. United States*, 349 U. S. 155; *Watkins v. United States*, 354 U. S. 178, 1 L. ed. 2d 1273. "Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interest." *Associated Press v. United States*, 326 U. S. 1, 20.

In addition, the inherent unlawfulness of this combination is heightened by the means used to obtain the objectives of this conspiracy. Coercion is used upon all employers in the industry [R. 36] and the blacklist is one of the prime weapons [R. 36]. The blacklist used here

shows the conspiracy "in action." The effect of this blacklisting of persons who have exercised their constitutional privileges in a federal tribunal is to subject them to punishment of a most severe nature—the loss of their livelihoods for acts not forbidden by law. Especially is the coercion, as well as the penalty, magnified through these blacklists when it is considered that the combination includes public officials [R. 34]. "The evil of blacklisting rests in the power wielded by a combination to exclude named persons from pursuing their occupations in certain regions or industries." Note, *Liability For Blacklisting Under The Prima Facie Tort Doctrine* in 51 Col. L. Rev. 398, 399 (1951).

In short, the respondents here are doing a great deal more than exercising their private rights; the combination is dictating to the petitioners; it is dictating to every employer in the industry; and it is bringing the pressure and oppression to bear on all parties by the use of the blacklist. "Blacklists are real instruments of coercion, as every man whose name is on one soon discovers." *Quinn v. Leathem,* (1901) A. C. (Eng.) 495, 538. No "unlawful combinations of capital, or unlawful combinations of labor" may be permitted under a government of laws to impose such a restraint upon the citizenry "whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words or printed matter." *Gompers v. Bucks Stove & Range Co.,* 221 U. S. 418, 438. See also, *Eastern States Lumber Ass'n v. United States,* 234 U. S. 600, 609. All of this the State has countenanced in totally denying petitioners any relief.

Fourth, the motion picture producer respondents did not act alone; they conspired with members and employees

of a legislative committee acting both in their official and private capacities to forfeit the right to work and the political liberty of these petitioners. The Committee functioned as "lawmaker" by establishing the standards for employment in the motion picture industry; as "court" and "jury" by trying petitioners for their non-conformity to these standards and by declaring a sentence of excommunication from the motion picture industry upon petitioners. It remained only for the mandate to be executed and for this the Committee called upon the respondents for "cooperation." And not in vain. The axe was wielded and heads rolled. The decree was fully satisfied.

The respondents thus assumed the role of the Executive. They should not be permitted to escape its incidents. Here there is something akin in substance although different in form to what this Court referred to in *American Communications Assoc. v. Douds,* 339 U. S. 382, 401-2, when it said: ". . . and when authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." The substitution of a fist for a thumb does not alter the principle.

In *Culp v. United States,* 131 F. 2d 93, private individuals conspired with state officers falsely to arrest citizens, incarcerate them and exort large sums of money from them as a condition of release. It was held that the state officials were obviously acting under "color of law"; that by conspiring with these officials private individuals assumed the same cloak; and that both the officials and private conspirators were guilty of a violation of 18 U. S. C. 52 [now 18 U. S. C. 242 (see Appendix A)] which is limited to acts under "color of law." In *Picking v. Penn. Ry. Co.,* 151 F. 2d 240, plaintiff sued certain

state officers and the defendant railroad charging a conspiracy under 8 U. S. C. 43 (a statute affording a civil remedy but otherwise similar to 18 U. S. C. 242, referred to above and dealing only with acts "under color of law") to deprive plaintiff of his liberty without due process of law, in which the defendant railroad "materially and physically participated" therein by acts "instigated and encouraged by all of the other defendants."[4] Although the railroad contended that the complaint should be dismissed against it because it was not an agency of the state, its plea was denied and it was held to answer as a co-conspirator. Here the motion picture respondents sacrificed their claimed status as simon pure private concerns and individuals when they conspired with a governmental agency to carry out its directives that the employees of the industry either conform with the Committee's standards or be exiled from the industry.

As was discussed above, *Marsh v. Alabama, supra,* treated private employers as in effect exercising state power in the absence of any conspiracy with government officials. In a subsequent case it was stated that the only difference between that case and *Marsh v. Alabama* was ". . . . Here instead of a private corporation, the federal government owns and operates the village. The difference does not affect the result." *Tucker v. Texas,* 326 U. S. 517, 519-20. Certainly where there is joint action of a governmental agency and of private interests the result should be no different.

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[4]A closer parallel would be difficult to find. Here the Committee instigated the acts of the corporation and other private respondents.

Fifth, the court below held that petitioners are entitled to no relief because they did not allege that they had actual contracts of employment or were in the process of obtaining such contracts in the motion picture industry. The complaint alleges that respondents by their conspiracy made it impossible for petitioners to negotiate contracts of employment in that field. Thus respondents are left in this enviable position: By their own wrong in excluding petitioners from any opportunity of obtaining any employment in the industry they create the condition which makes it impossible for the injured persons to secure relief. In the dissenting opinion of Chief Justice Stone in *Jones v. Opelika,* 316 U. S. 584, 600, 602-3 (later adopted as the opinion of the Court, 319 U. S. 103, 104), it was claimed that the petitioner, in order to have standing in court, should have applied for a license to distribute religious literature. The Chief Justice said with respect to this contention: "The Constitution can hardly be thought to deny to one subjected the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands." Here the contention is even more strained. By their illegal conduct, the motion picture industry respondents have made it impossible for the petitioners to obtain any employment in the industry. Now they assert that petitioners have no standing to sue because they have no contracts. By making it impossible for you to obtain any employment at all, the argument goes, we have placed you in a position in which you cannot prove loss of a specific job;

by thus destroying your means of livelihood altogether, we make it impossible for you to prove any specific damages and we should be allowed to go our way with impunity to continue to decide who may and who may not have any opportunity whatsoever of earning his livelihood; moreover, we may do this for any purpose we choose, including the destruction of First Amendment rights.

The refusal of the state courts to grant relief rests on no better ground. The effect of the ruling is to establish a policy for the state that monopolistic combines have the right to deprive persons of any opportunity to contract because of their beliefs. The practical situation is actually no different than it would be if the state had adopted a statute declaring this rule. Even if we were to assume that such monopolistic combinations may be given the general power to determine who shall work in an industry, it does not follow that the right to exclude individuals as a means of controlling ideas could withstand the tests imposed by the Constitution. In the case of *Doyle v. Continental Insurance Co.*, 94 U. S. 535, it was held that a state might condition the doing of business within its borders by a foreign corporation upon the corporation's abstaining from use of the federal courts. Dissenting, Justice Bradley said: "The argument used, that the greater always includes the less, and, therefore, if the State may exclude the appellees without any cause, it may exclude them for a bad cause, is not sound. It is just as unsound as it would be for me to say, that, be-

cause I may without cause refuse to receive a man as my tenant, therefore I may make it a condition of his tenancy that he shall take the life of my enemy, or rob my neighbor of his property." (94 U. S. at 543-4). A commentator has said with respect to this decision: "The vice in an unconstitutional condition, in other words, is its tendency to bring about a forbidden result, interference with the federal judicial power in this case." "Invasions of the First Amendment to Conditioned Public Spending" by Alanson W. Wilcox, 41 Cornell Law Quarterly 12-23. *Terral v. Burke Construction Co.*, 257 U. S. 529, 532-3, overruled the *Doyle* case and established its dissenting opinion as law. The invalidity of the condition, said Chief Justice Taft, ". . . rests on the ground that the Federal Constitution confers upon citizens of one State the right to resort to federal courts in another, that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void because the sovereign power of a State in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of th supreme fundamental law."

Here the exclusion of petitioners from the Courts has curtailed the free exercise of constitutional privileges and the right to work in derogation of the supreme law of the land. State action which results in such an exclusion is forbidden by the Constitution.

II.

The State Court Arbitrarily Denied Petitioners the Protection of Freedom of Speech and Association by Refusing Any Relief From the Monopoly Combination Which Conditioned the Right to Work on the Surrender of These Essential Liberties Thus Depriving Petitioners of Their Liberty and Property Without Due Process of Law in Violation of the Due Process Clause of the Fourteenth Amendment.

A. The duty of the state court to protect the petitioners' constitutional right to work is supplemented and buttressed by its obligation to protect their freedom of speech and association. The deprivations of petitioners' freedoms have a common source and join to submerge simultaneously petitioners' rights of property and of conscience, all of which the state in its dismissal of the complaint legalized and approved.

The petitioners refused to "surrender [to the Committee] their constitutional rights and privileges"; they would not "disclose their own [or others'] political affiliations, associations and beliefs" thus "maintaining a political principle of Freedom of political association, affiliations and beliefs" which they believed "protected by the Constitution of the United States." [Complaint, Para. VII, First Cause of Action, R. 37, incorporated by reference in each of the other Counts, R. 38.] These petitioners, who thus sought to maintain their constitutional rights against what they believed to be arbitrary governmental action, were the objects of a conspiracy which excluded them from all employment in the industry to which they had devoted years of labor and in which they had achieved high esteem and "reputations for excellence of

work." [Complaint, Para. II, of each cause of action. R. 29.]

This total exclusion from a common occupation constituted a wrongful taking of property rights; such exclusion, because it was directed at the maintenance of political beliefs, aggravated the wrongful taking by its trespass into the realm of the mind. A purposeful design, not happenstance, was responsible for this multiplication of evils. The "purpose of the conspiracy" was "to limit, control and direct the political activities" of employees in the motion picture industry in such a manner as to cause them to "refrain from adopting or following any course or line of political action and activity not acceptable to [said] Committee". Threats "of discharge and loss of employment", with petitioners as the object lesson, were the means adopted to achieve the desired conformity. An admitted added purpose of the conspiracy was to "limit the production of motion pictures . . . to those the content of which is acceptable to the said Committee." [Complaint, Para. VII, First Cause of Action, R. 37.]

All this the complaint alleges and the demurrer, for the purpose of this proceeding, admits. But the courts of California by their application of the doctrine of judicial notice have taken this case outside the restrictions of the four corners of the pleadings. What the parties have actually done in relation to the matters alleged is largely recorded in official proceedings which, to the extent that they are relevant, may be considered as part of the pleadings. These official proceedings, discussed in detail in the statement of the case, reveal a program for thought control in the motion picture industry, embracing both its products and its human instruments, which was initiated by the Committee and was brought to ful-

fillment by joint action between it and the Motion Picture Respondents.

This particular program has been part and parcel of a program directed by the House Committee on Un-American Activities at virtually every aspect of American life.[5] ". . . From time to time the Committee has concerned itself with such matters as the content of Hollywood films, the programs of radio news commentators, and the text-books used in American schools. In most of these instances the Committee's chief purpose has seemed to be the establishment of patterns of American, as against un-American, activity which would be controlling in the development of our national life, public and private." Robert K. Carr, "The Un-American Activities Committee", 18 U. of Chicago, L. R. 598, 599-600.

As long ago as 1947 Judge Clark dissenting in *United States v. Josephson*, 165 F. 2d 82, 95, pointed out that the Un-American Activities Committee has investigated "The American Civil Liberties Union, the CIO, the National Catholic Welfare Conference, the Farmer Labor Party, the Federal Theater Project, Consumers Organization, various publications from the magazine 'Time' to the 'Daily Worker'. . . . ." The Committee set itself no less a task than "to set the standards of American thought and conduct with respect to orthodoxy and heresy in politics", Carr, *supra*, at p. 599; *Cf.* Paul J. Liacos, "Rights of Witnesses Before Congressional Committees", 33 B. U. L. R. 337, 361-2; Robert C. Cushman, "Civil Liberty

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[5] ". . . But the experience of this Committee's activities now for nearly a decade is instructive in the contrary direction, that is, as showing that there are no bounds to its asserted and exerted powers"—the dissenting opinion of Judge Clark in *United States v. Josephson*, 165 F. 2d 82, 93, 95.

and Public Opinion; in Safeguarding Civil Liberty Today", Bernay's lectures of 1944 at Cornell University 81[6]; Dembitz, "Congressional Investigation of Newspapermen, Authors and Others in the Opinion Field—Its Legality Under the First Amendment", 40 Minn. L. R. 517. Among the viewpoints which the Committee from its early days has included in its schematism of un-Americanism are "opposition to the American system of checks and balances, opposition to the protection of property rights, belief in dictatorship, opposition to the Franco government of Spain, opposition to General MacArthur, advocacy of a world state, advocacy of the dissolution of the British Empire, criticism of members of Congress, and criticism of the Committee on Un-American Activities." *Barsky v. United States*, 167 F. 2d 241, 257; Edgerton, J., dissenting, citing Note, "Constitutional Limitations on the Un-American Activities Committee", 47 Col. L. Rev. 416, 418, 422-3.

That the Committee's hearings have been concerned with matters other than legislation is virtually self-evident. The scope and standards established for itself by the Committee are irreconcilable with the assurance of the First Amendment that in this land beliefs and associations are for each individual to determine for himself according to his own conscience. This Committee has never explained how an unlimited examination into ideas and associations protected by the First Amendment could possibly be in aid of legislation. To the contrary, it has

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[6] "By the skillful use of labels, or slogans, American public opinion was innoculated with the dangerous idea that true Americanism consists in the stalwart defense of the *status quo* and the suppression of those dangerous and disloyal people who are unpatriotic enough to want to criticize it or suggest any change in it." *Ibid.*, at p. 100.

asserted a different objective: "As contrasted with the FBI and the grand jury, the House Committee on Un-American Activities has a separate and a very special responsibility. It functions to permit the greatest court in the world—the court of American public opinion—to have an undirected, uncensored, and unprejudiced opportunity to render a continuing verdict on all of its public officials and to evaluate the merit of many in private life who either openly associate and assist disloyal groups or covertly operate as members or fellow travelers of such organizations. It is as necessary to the success of this committee that it reveal its findings to the public as it is to the success of the FBI that it conceal its operations from the public view. . . ." Interim Report on Hearings Regarding Communist Espionage in the United States Government, 80th Cong. 2d Sess. (1948).

Former Representative (now Senator) Mundt has stated on the floor of the House that the function of the Committee is to expose, publicize and furnish information to the American people. 92 Cong. Rec. 367 (1946). See also, Statements of Representative Dies, 83 Cong. Record 7570 (1938); of Representative Rankin, 91 Cong. Record 275 (1945); and H. Rep. No. 2742, 79th Cong., 2d Sess. 16 (1947).

The result of this program could be no surprise. "People have grown wary of expressing any unorthodox opinions. No one can measure the inroad the Committee has made in the American sense of freedom to speak. . . ." dissenting opinion of Judge Edgerton, *Barsky v. United States*, 167 F. 2d 241, 252, 255. The Committee ". . . invites and justifies an attempt to enforce conformity of political thinking, to penalize the new and the original, to label as subversive or un-American the attempt to devise

new approaches for the public welfare, in short to damn that very kind of initiative in experimentation which has made our democracy grow and flourish." Dissenting opinion of Judge Clark in *United States v. Josephson*, 165 F. 2d 82, 93, 95, 97.

The full measure of the Committee's program to dam up the free flow of public opinion requires an examination of its blacklisting activities. The importance which the Committee attributes to this phase of its activities accounts for its never-ceasing hunger for names, names and still more names. "Subversive" individuals mark as "subversive" the organizations to which they belong. No surer sign of "subversion" is available than membership in a "subversive" organization. Each feeds upon the other as the lists grow.

The year 1948 found the Committee with a compiled filed index and information on 500,000 individuals plus an undesignated number of organizations; some insight as to the number of listed organizations is available from the facts that there were 380 organizations listed under the first letter of the alphabet alone, and that reports of investigators referred to 15,825 organizations. Reports on 25,591 persons and 1,768 organizations had been prepared for members of Congress alone.[7] Governmental agencies of all kinds had made 5,985 separate examinations of Committee files (Committee Report, D. c. 31, 1948, pp. 21-24).

From this beginning, the Committee has moved on at a rapid rate. One year later the number of individuals

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[7] No information is available as to the extent to which this information reached private individuals or entities. But see charge of Representative Voorhies that information was used for attacks on citizens by Congressmen.

listed had been increased by 170,000. In that year government agencies resorted to the files in 3,956 separate occasions, and there was an accumulation of more than one million documents and records in the Committee's files. (Committee's Annual Report, 1949, pp. 18-21.)

In 1950 the Committee's files were supplemented by 200,000 additions and the tempo of the reported use of its files continued unabated. (Committee's Annual Report, 1950, pp. 40-43.)

In 1951 the estimated number of names in the files had leaped to 750,000 and the use of files had increased by more than 50%. (Committee's Annual Report, 1951, pp. 24-26.)

By the end of 1952 the number of individuals dossiered by the Committee totalled not less than 840,000 (Committee's Annual Report, 1952, pp. 77-79.) In 1957 the Committee issued a revised "Guide to Subversive Organizations and Publications" adding 181 organizations and publications to the 391 labelled as subversive in a similar "Guide" released by the Committee in 1951. Obviously no individual who or organization which fails to conform to the Committee's concepts of Americanism is immune from its assaults.

This "information" has been utilized for many purposes, not the least of which is the driving of "subversives" from jobs considered "critical" by the Committee, cooperating for this purpose with private employers as well as government agencies, state and federal. Gelhorn, "The States and Subversion" (1952), pp. 68-9. Barrett, "The Tenney Committee", pp. 27-29, n. 1, 280, Chap. 11, New York Times, July 14, 1955, p. 1, Col. 3; *Ibid.*, Jan. 5, 1956, p. 32, col. 2; *Ibid.*, June 5, 1956, p. 1, col. 2, Carr, "The House Committee on Un-American Activities 1945-

1950", pp. 253-61, Chap. 10, Taylor, "Grand Inquest", pp. 80-81.

The question whether the Committee engages in blacklisting has been answered by another question: "How can the committees be otherwise understood when they make clear that suspected pro-Communists should be discharged from jobs and removed from opportunities where they can disseminate their views, and in fact that suspicion will attach to anyone who tolerates them in opinion-influencing positions?" Dembitz, *supra*, 40 Minn. L. R. at 523; see fn. 23 for examples; see also, Note "Legislative Inquiry Into Political Activity: First Amendment Immunity From Committee Interrogation", 65 Yale L. J. 1159, 1189 (1956). A file of more than one million names of persons and organizations has been gathered for the avowed purpose of driving "subversives" out of private and government employment. ". . . Here there can be no doubt of that intended and actual consequence of the investigation. The Committee announces its desire that the persons it finds guilty shall forfeit their jobs in public and private industry. . . . * * * There can be no doubt of the obvious and direct abridgment of the right freely to speak and express one's opinions which is thus achieved." *United States v. Josephson*, 165 F. 2d 82, 93, 95, 100, Clark, J., dissenting.

The over-all program of the Committee has had certain concentration points. Foremost among these has been the motion picture industry. In that industry the Motion Picture Respondents have joined hands with members of the Committee to effectuate its objectives. It is this conspiracy (to mould to the fashion patterned by the Committee the content of motion pictures and the speech and associations of those who earn their livelihood making

motion pictures—to be achieved by the simple device of black-listing all who fail to conform—) that is charged in the complaint dismissed by the State Court.

B. In assessing the impact upon this case of the impingement upon the liberties secured by the First Amendment, it is not essential to debate whether those freedoms occupy a preferred position in the constellation of constitutional principles. That the illumination of the entire system depends in large measure on the light which only free expression of ideas can cast upon it has never been doubted. Because of this it has sometimes been said that there is a ". . . preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment". *Thomas v. Collins*, 323 U. S. 516, 524-30. These "fundamental rights and liberties" which lie "at the foundation of free government by free men" (*Schneider v. Irvington*, 308 U. S. 147, 161) demand the correction of "any action of the Government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." *Grosjean v. American Press Co.*, 297 U. S. 233, 249-50 (1936), quoting from 2 Cooley Constitutional Limitations 886 (8th Ed., 1927).

When dealing with property rights, a state, without violating the due process clause of the 14th Amendment, may impose such restrictions as can be rationally supported. The power of a state, consistently with due process, to foster a restriction upon freedoms of expression is another matter. "They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect." *West Va. State Bd. of Educ. v. Barnett*, 319 U. S. 624, 639. *Cf. Thomas v.*

Collins, Mr. Justice Jackson concurring, 323 U. S. 516, 544, 545. Departure from this guide post leads to the path of abandonment of the thesis that free speech, press and assembly are essential to our governmental processes ". . . . in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." *DeJonge v. Oregon,* 299 U. S. 353, 364-5.[8]

In this case the attack upon constitutional liberties has been waged from many points. Always in the main line of fire, however, has been the right of political association. This strategy is supported by a vast history of the experience of free men and of men fighting for freedom. The political freedom of the individual is dependent upon his right of association with others. If free political association is destroyed, the ability to communicate is undermined at its weakest point and all other freedoms can be quickly routed.

"Exercise of these basic [First Amendment] freedoms in America has traditionally been through the media of political associations. Any interference with the freedom

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[8]"Too often free speech is discussed only in terms of the rights of the individual. That is not by any means the whole story. At stake is our collective political birthright. For it is one of the pre-suppositions of democracy that men will speak their minds; it is one of the conditions of democracy that all sides of the public questions will be heard. Hence it is one of the obligations of citizenship to speak out for what one believes. Thus, over the years, is error best combated; such is the democratic thesis." "Freedom of Inquiry v. Authority" by Joseph O'Meara—Dean of the Notre Dame Law School. 31 Notre Dame Lawyer 3, 10.

of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity of minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society."[9] *Sweezy v. New Hampshire,* 354 U. S. 234. It is because freedom of speech, press, assembly and petition are interdependent that they are "coupled in a single guaranty." *Thomas v. Collins,* 323 U. S. 516, 530.

Here the conspiracy of the respondents threatens all of these rights. In effect the respondents have set themselves up as censors of the motion picture industry and of all those who have or desire employment therein. The Committee has decided what beliefs are good for the government and which are bad. The respondents seek within the motion picture industry to promote the former and suppress the latter. This falls within the definition of censorship as: ". . . the policy of restricting the public expression of ideas, opinions, conceptions and impulses which have or are believed to have the capacity to undermine the governing authority of the social and moral order which the authority considers itself bound

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[9] "The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society." De Tocqueville, Alexis, *Democracy in America* (New York, 1946), Vol. X, p. 196.

to protect." Harold D. Lasswell, Censorship, Encyclopedia of the Social Sciences (New York, 1930), III, 290.[10] As has been stated by Paul L. Liacos in "Rights of Witnesses Before Congressional Committees", 33 B. U. L. 337, 385, 386, ". . . our system of government is structured on the belief that the ultimate public interest lies with the protection of the most unpopular dissenter. The fact that some congressional committees have by intimidation and public pressure encouraged orthodoxy of views is the most damning criticism of the investigative committee." It is the function and duty of courts to stand as "havens of refuge" for *all* who are victimized because of their nonconformity. *Chambers v. Florida,* 309 U. S. 227, 241.

In using its powers so as to defeat that function and duty, the California Court disregarded the command of the 14th Amendment. The damage flowing from this action fell not upon these petitioners alone. Conformity has become the *sine qua non* for survival in the motion

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[10]Nor would it lessen the evil if it were true that the Committee with the aid of the motion picture respondents sought merely to eliminate a small group of dissenters totally lacking in public support. Epithets applied to these petitioners should not be permitted to conceal what is at stake here. Treason or some synonym for treason has been the battle cry of this Committee. This weapon used against men who dare to differ is an ancient one. A prevalent theme in Greek literature, as for example in Euripides' "Palamedes" is one in which the true wise man is falsely accused of treason and condemned to death. The pain in the lines of the chorus echo through the ages "Ye have slain, ye Greeks, ye have slain the nightingale; the winged-one of the Muses who sought no man's pain.", a reference supposedly to Protagonus who was accused of "atheism" and forced to flee Athens for saying "Man is the measure of all things." Gassner, Masters of the Drama, New York, 1940, p. 69. Murray, Euripedes and His Age, New York, pp. 57, 137-8. Winspear, The Genesis of Plato's Thought, Russell, New York, 1956, p. 140. It may well be asked whether there is any high principle that we cherish today which at some time in the past has not suffered the label of heresy or treason.

picture industry. Other channels of communication have been subjected to similar pressures. And the impact has not stopped there. What the Committee has done in this industry is possible elsewhere. If one desires security in his job, it becomes prudent not to say anything of which the Committee might disapprove. "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." *Thornhill v. Alabama*, 310 U. S. 88, 97.[11]

"The people, not the government, possess the absolute sovereignty." *Report on the Virginia Resolutions* (Elliot's Debates, Phil. 1836, 2nd Ed., Vol. IV, p. 569). In modern society a free people can exercise sovereignty, the source of their freedom, only by full and free discussion

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[11]The Committees obviously exert an influence against the free and unabashed scrutiny of ideas envisaged by the first amendment, insofar as they discourage appraisal of political ideas on their merits and encourage acceptance of what appears government-approved and safe. . . .

". . . The tendency of investigations in this field as presently conducted is, therefore, we submit, to guide the public towards an orthodoxy of ultra-nationalism, and to cause avoidance of any speaker or writer who does not demonstrate by his avowal of such a viewpoint that he is free from taint or suspicion.

"The Committees' work seems analogous to the establishment of a system of censorship which has the 'pervasive' effect of discouraging any composition that is not certain of the censor's approval. See Thornhill v. Alabama, 310 U. S. 88, 98 (1940).

"It hardly needs laborious demonstration to show that the committees' treatment with suspicion of a group of political ideas, tends to make non-Communists who are concerned with protecting their reputations, influence, or positions, hesitant and fearful about expressing a political opinion that may appear to fall in the suspect class." Nanette Dembitz, "Congressional Investigation of Newspapermen, Authors and Others in the Opinion Field—Its Legality and the First Amendment" 40 Minn. L. R. 517, 528, 531.

of all issues, as an indispensable aspect of participation in the political process.[12] The representatives of the people have the right and obligation to contribute to that discussion but not to seek to control it by coercive measures. Such control would convert the representatives into the masters of the people. Sovereignty would change places and freedom would be destroyed in the process.[13] This would be the penalty for forgetting that "Authority here is to be controlled by public opinion, not public opinion by authority. . . ." *Schneider v. State of New Jersey*, 308 U. S. 147, 161.

It is for this reason that: "The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests. . . .". *Roth v. United States*, 354 U. S. 476, 488.

To give free run to a private self-anointed super government within an industry working in conspiracy with members of a Congressional Committee is to throw the door

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[12] "These judges know that statutes, to be sound and effective, must be preceded by abundant printed and oral controversy. *Discussion is merely legislation in the soft. Hence drastic restrictions on speeches and pamphlets are comparable to rigid constitutional limitations on law making.*" Chaffee, "Free Speech in the United States", pp. 360-361 (emphasis added).

[13] "Libarnius says, that at 'Athens a stranger, who intermeddled in the assemblies of the people, was punished with death.' This is because such a man usurped the rights of sovereignty." (Montesquieu, Spirit of Laws (Cincinnati, 1873), Vol. 1, p. 10.)

wide open to destruction of constitutional liberties and to abandon the safeguards fashioned by the Constitution for the people's sovereignty.

C. The right of each individual to freedom of belief, speech and association is a matter of high moment. Loss of such freedom to anyone threatens a chain reaction, the end result of which extends far beyond its starting point. When the original perpetration is directed against persons whose work is in the field of art, culture and ideas, the danger is heightened. For then, not only individuals, but an entire area of communication may be rendered sterile. Here the object and impact of the suppression relate directly to the content of motion pictures and the expressed beliefs of those engaged in their production.

There is no justification for excepting motion pictures from the guarantees the Constitution affords to freedom of expression. *Burstyn v. Wilson*, 343 U. S. 495, 503. Mr. Justice Frankfurter's concurring opinion, joined by Mr. Justice Jackson and Mr. Justice Burton, notes that the effect of the New York censorship statute tested in the *Burstyn* case is to permit pressure groups to determine what is "sacrilegious" and therefore what may or may not be shown. ". . . Consequently the film industry, normally not guided by creative artists, and cautious in putting large capital to the hazards of courage, would be governed by its notions of the feelings likely to be aroused by diverse religious sects, certainly the powerful ones. The effect of such demands upon art and upon those whose function is to enhance the culture of a society need not be labored." *Ibid.*, 343 U. S. at 532.

Here "the film industry" has entered into a conspiracy with members of the Committee to bar non-conformists (upon the basis of claimed political beliefs, rather than

religious commitments) from the creative process of picture making and to control the content of motion pictures to meet the standards of the Committee members. Certainly, "[t]he effect of such demands upon art and upon those whose function is to enhance the culture of a society need not be labored."

Freedom promotes art and culture, for it is their natural environment. Freedom without a flourishing of arts and letters is virtually a contradiction in terms. To strike at these media of communication is to threaten the jugular vein of democracy. Free Speech in the United States, by Zechariah Chafee, Jr., 1946, 17, 28-30, 154, 366, 545. In this era, the motion picture is a cultural art form which reaches and influences with considerable frequency great numbers of the American people. The handicaps upon its artistic and cultural content which result from the commercial interests of those who invest their money in the production of motion pictures are well known. This is not a problem with which the judiciary can grapple. However, its existence highlights the importance of eliminating any restraints which the law condemns.

The right of an individual business enterprise to make the kinds of motion pictures which in its best judgment are calculated to return the highest profits and to hire personnel with the qualifications necessary to that end is not challenged here except by the combination of respondents. Petitioners complain of a combination of business enterprises, which collectively dominate the motion picture industry, when they act with members of a Congressional Committee for the purpose of controlling the content of all motion pictures and of determining the political qualifications of all persons employed in the industry. Any attempt to equate this with the right of the individual pro-

ducer to run his business in the manner he deems in his best interests is to denominate opposites as equivalents. The effect of the conspiracy is to prevent individual determinations designed to promote competition for the best product. Experimentation with new or controversial ideas and subjects is discouraged. Competition in ideas is stifled.[14] A censor hovers over the work of every artist in the industry. The individual creativeness which is one of the highest goals of a free society is repressed. Ignored is the warning once given by two members of this Court. "In this nation every writer, actor, or producer, no matter what medium of expression he may use should be freed from the censor." *Superior Films v. Dept. of Ed.*, 346 U. S. 587, 589, Mr. Justice Douglas and Mr. Justice Black concurring.

Book-burning can find few defenders in this land. To destroy a work of art or of culture or of any expression of ideas is abhorrent. But men whose books have been burned have gone on to write other books and copies of those put to the fire have always survived the flames of bigotry. But what of the loss to society because of books that have never been written because the writers have been burned or their continued creation of books in some other fashion rendered impossible?. No individual may have the right to demand of society that his works be published. But unless every one is given an opportunity to have the products of his mind complete for publication

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[14]The character of attack upon ideas has been illustrated in the dissenting opinion of Judge Clark in *United States v. Josephson*, 165 F. 2d 82, 93, 95, at 96: ". . . As a matter of fact, the testimony at the recent movie investigation found that the necessary un-American qualities for which the Committee was searching in films which placed bankers in an unfavorable light or talked 'against the free enterprise system.'"

with those of all others, books are destroyed with even greater finality than if they are burned after having been committed to paper and the printing press.[15] And so it is with every form of expression, including motion pictures.

Here censorship achieves its highest mark. These petitioners have been barred from any opportunity to engage in creative activity in their chosen field. Their works will never be burned—nor evaluated on their merits. The issue sharply presented here is whether a state may sustain such action by a conspiracy of producers controlling the production of motion pictures acting in concert with members of a Congressional Committee;—by establishing a rule of law that individuals who do not have contracts in their pockets or close at hand may have their freedoms thus abridged with the consequent loss to the nation.[16]

D. The arbitrary methods pursued by the Committee in initiating the process of punishment and by the motion picture respondents in its execution further compound the evils granted sanctuary by the dismissal of the complaint herein.

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[15]In the seventeeth century George Fox, founder of the Quakers, upon refusing to swear any oath, was given a Bible; he held it in his hand saying "How come it that the Book is at liberty amongst you . . . and yet ye imprison me for doing as the book bids me?' Why don't ye imprison the book?" The Journal of George Fox, prepared and edited by Norman Penney, N. Y. 1924.

[16]The motion picture industry will not alone be affected by the principles declared in this case. It is but one of many special areas of our national life in which reasoned tenderness for our freedom takes on a significance even greater than that which it merits in every nook of our society. *A Free and Responsible Press*, University of Chicago, 1947, pp. 6-7); *Sweezey v. New Hampshire*, 354 U. S. 234, 266; *Wieman v. Updegraff*, 344 U. S. 183, 194, 194-5; *Konigsberg v. State Bar of California*, 353 U. S. 252.

The petitioners have been deprived by respondents' conduct of rights the value of which rank high to them as individuals and which cast their protective cloak about all of the people. Procedural due process is a prerequisite to a taking of such rights even if it were otherwise constitutionally permissible. Any test to determine the sufficiency of procedural due process, particularly where the "livelihood" of individuals is affected thereby, which ". . . has regard to the mere form of the proceedings and ignores reality" does not measure up to the requirements of the Constitution. *Morgan v. United States*, 304 U. S. 1.

This principle was followed in *United States v. Lovett*, 328 U. S. 303, where Congress in certain appropriation bills provided that no monies should be used to pay the salaries of three named individuals. It was held by this Court that there was thus accomplished "the punishment of named individuals without a judicial trial"; this method of "cutting off the pay of certain named individuals found guilty of disloyalty" without the safeguards of a judicial trial is within the proscriptions of the due process clause. 328 U. S. at 316. *Cf. Kilbourne v. Thompson*, 103 U. S. 168, 182. Congress was thus prevented from circumventing the Bill of Rights. What the Constitution forbids to Congress as whole may not successfully be asserted, it is now clear, as a prerogative of one of its Committees. "The Bill of Rights is applicable to investigations as to all forms of governmental action. . . ." *Watkins v. United States*, 354 U. S. 178; *Sweezey v. New Hampshire*, 354 U. S. 234; *United States v. Rumely*, 345 U. S. 41, 97; *Cf. Kansas v. Colorado*, 206 U. S. 46, 81.

The punishment which these petitioners have suffered was preceded by none of the procedures embodied in due

process as the fundamental ideas of fair play and justice in civilized society. *Cf. United States v. Lovett,* 328 U. S. 303, 317-18; *In re Oliver,* 333 U. S. 257, 273. Petitioners were given no notice that they were charged with any offense; in truth they were charged with none except in the vernacular of the Committee. They were given no day in court—no opportunity to present any defense. Cross-examination was denied to them as was any meaningful right of counsel. The Committee was the legislature for it established the standards of wrongdoing, and it was also the prosecutor, judge and jury all rolled into one.[17] Only the function of executioner was left to the motion picture respondents, whose private status merely multiplied the evils arising out of such an assumption of a governmental function. Banishment from their means of livelihood was the sentence carried out, one to which the label of "cruel and unusual punishment" might appropriately be applied. The Committee members now assert the immunity of government officials; the motion picture respondents that of private business. Neither may be allowed to escape responsibility for their usurpation of power as long as the Fourteenth Amendment and the Bill of Rights retain their vitality.

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[17]This far exceeds the "aggregation of powers and inherently concomitant denial of historic freedoms" condemned by Mr. Justice Rutledge concurring in *Re Oliver,* 333 U. S. 257, 278, 279. Small wonder then that

> ". . . Some witnesses have felt that they have been abused, denied traditional constitutional protections, and irresponsibly villified and slandered by or before congressional committees. . . . . The abuses of certain congressional committees have been pointed out as demonstrating the need for reform and restraint. The unfairness of some committees in dealing with witnesses has brought forth pleas for procedural reforms and limitation of the investigative power. . . . ." Paul J. Liacos, Rights of Witnesses Before Congressional Committees, 33 B. U. L. R. 337, at 338.

The danger implicit in legislative inquiries not clearly limited to appropriate legislative objectives has been perceived by eminent authority.

> "Not only does the logic of the legislative needs call for a strict limitation of this power, but also the policy of the situation; for the Legislatures are not bound by, and do not employ, the evidential rules that in judicial trials protect parties and witnesses and check abuses of power * * *. Moreover, legislative inquiries are sometimes conducted for partisan purposes and personal aggrandizement, and there is a particular temptation to pursue the inquiry beyond the necessities of contemplated legislation and to assume improperly the function of a grand jury." 8 Wigmore, *Evidence* (3d ed.), Section 2195.

The very resolution creating the Committee renders appropriate this warning against abuse of power. "It would be difficult to imagine a less explicit authorizing resolution", in the light of the history of the Committee. "No one can reasonably deduce from the charter the kind of investigation that the Committee was directed to make". *Watkins v. United States*, 354 U. S. 178, 202, 204. *Cf. Harriman v. Interstate Commerce Comm.*, 211 U. S. 407, 420. Any person professing a point of view which displeases the Committee is answerable to it. "In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." *Thomas v. Collins*, 323 U. S. 516, 535.

The precise technique by which such a result is achieved merits consideration. The Committee assures the people that its function is to let them know the facts so that they can determine in an informed manner the course of action to be pursued in combatting "subversion." Explicity at times, implicitly at others, the Committee de-

clares that once its share of the responsibility has been met, it is the obligation of the public and of industry particularly to excommunicate the Pariahs the Committee has germinated.

The pattern thus fixed, the Committee "exposes"; then the motion picture industry disposes. The motion picture respondents' position is that this exposure has brought these individuals into disrepute with the general public; if anyone in the industry continues to employ any person so exposed by the Committee, it will injure the industry which needs public good will in order to make money; accordingly the entire industry must combine to prevent any person labelled "subversive" by the Committee from securing any employment in the industry.[18] What these respondents have thus asserted must be done has been done.

To evaluate this position it is necessary first of all to consider whether the power of "exposure" is possessed by the Committee. For it is probable that even the respondents would not claim the right to execute the sentence of a Kangeroo Court in the belief that public acclaim might thus be won and profits increased.

The "right to be exempt from all unauthorized, arbitrary or unreasonable inquiries or disclosures in respect of . . . . personal and private affairs" has long been recognized as one among those most valued by the people. *Sinclair v. United States*, 279 U. S. 263, 292. *Cf.* Mr. Justice Brandeis dissenting, "The makers of our Constitution . . . conferred as against the Government,

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[18]At other times in our history the industry might have sought to justify identical action if the investigation "exposed" Negroes, Jews, Catholics, the Irish, or Masons!

the right to be let alone—the most comprehensive of rights and the most valued by civilized man." *Olmstead v. United States*, 277 U. S. 438, 478. In more recent times this Court observed the fact that exposure, as for example, by requiring members either of particular religious denominations or of political parties to wear identifying armbands, cannot be distinguished in its effect upon First Amendment guarantees from "imprisonment, fines, injunctions or taxes." *American Communications Assoc. v. Douds*, 339 U. S. 384, 402. The unpronounced premise of the decision in *United States v. Rumely*, 345 U. S. 41, is that the process of exposure by an investigative committee inhibits free speech. *Dembitz, supra*, 40 Minn. L. R. 517, 542. That premise has now been clearly announced as a principle directly applicable to the Committee. In *Watkins v. United States*, 354 U. S. 178, 200 2d 1273, 1291, the addiction of the Committee to "exposure" as the focal point of its functions is demonstrated by its own official declarations. Distinction is then drawn between exposure of the workings of government and exposure of citizens. The rights and duties of Congress with respect to the former "cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals."

As Mr. Chief Justice Warren said in the *Watkins* case: "The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference." 354 U. S. 197. When this is done in an atmosphere sometimes comparable to a Roman circus, aided and abetted by the multitudinous and all-embracing forms of modern communication, the degree of interference expands both in intensity and scope. Add to this the Com-

mittee's practice of condemning as subversive or traitorous the associations and beliefs of the witness, actual or alleged, according to the Committee members' predilictions, and the vise designed to press prevailing beliefs into a pattern of conformity tightens. Yet this is not all. The Committee presses its advantage; calls for the ostracism and blacklistings of "unfriendly witnesses", sometimes overt, sometimes subtle, come from the Committee members. But the Committee alone cannot deal the final blow. Here the motion picture respondents acting in conspiracy with the Committee members perform the coup de grace. Nor is any guilt or guilty knowledge on the part of the victim a prerequisite for the punishment inflicted. *Cf. Sweezey v. New Hampshire, supra,* 354 U. S. 234, 246; *Wieman v. Updegraff,* 344 U. S. 183.[19]

The Committee's assumption of power over ideas gathers strength as its objectives are thus achieved. Each new victim adds muscle-tone to its processes and redoubles the need for new victims. "This kind of evil grows by what it is allowed to feed on." *Sweezey v. New Hampshire, supra,* Mr. Justice Frankfurter and Mr. Justice Harlan concurring, 354 U. S. at 263. The power of the Committee varies directly with the degree of injury those it exposes suffer. The greater the injury the greater the fear emanating from the Committee's activities; the greater the fear, the higher the degree of conformity secured; the higher the degree of conformity, the greater the power of the Committee to inflict injury. And so on in an ever-widening and deepening circle.

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[19] "Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." 344 U. S. at 191.

It is the motion picture respondents' participation in the conspiracy which makes possible the imposition of the injury of loss of all employment opportunity in the industry. Additionally, the blacklisting in the motion picture industry inevitably jeopardizes employment opportunities everywhere. The consequences to the individual are comparable to those "visited upon a person excluded from public employment on disloyalty grounds." *Wieman v. Updegraff, supra*, 344 U. S. at 190. *Cf. United States v. Lovett*, 328 U. S. 303, 316.[20] The framers of our Constitution understood full well the coercive power subsumed in the ability to inflict monetary loss; to secure the independence of the judiciary they provided that no judge's compensation might be reduced during his term of office. See *O'Donoughue v. United States*, 289 U. S. 516, 531, where the Court quotes Alexander Hamilton: "Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. In the general course of human nature, *a power over a man's subsistence amounts to a power over his will.*" (Court's emphasis.) Power over the will of the citizenry is the goal of this conspiracy and the combination here existing has exercised one of the most effective means of attaining it.[21]

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[20]This permanent proscription from any opportunity to serve the Government is punishment, and of a most severe type. It is a type of punishment which Congress has only invoked for special types of odious and dangerous crimes, such as treason." *United States v. Lovett*, 328 U. S. 303, 316.

Is permanent exclusion from an industry to which years of work have been devoted and in which a high degree of preeminence has been obtained any less galling?

[21]History is replete with examples of attempts to control beliefs by affording dissenters the choice between following their professions or chosen callings while eschewing the expression of troublesome thoughts or of accepting exile from their professions

In the *Watkins* case, it was held that the fact that the impact ~~upon~~ First Amendment liberties resulted partially from non-governmental activity of private persons did not relieve the investigating committee of its responsibility for "initiating the reaction". 354 U. S. at 198. Here the private entities joined hands with an agency of government and exercised their power over an entire industry in such a manner as to destroy all opportunity for the realization of their talents in that industry by any petitioner, all as a means of spreading a blanket of conformity over the industry and the individuals in it or desiring access thereto. The motion picture respondents seek to escape responsibility because the Committee initi-

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and callings and, ofttimes, from their countries. Plato paid the price of exile for his defense of his teacher Socrates; upon his return to Athens and the founding of the Athenian Academy he found it necessary to explain that he would avoid any participation in politics. Plato, Seventh Letter in Epistles; Plato, Bury's Translation, Harvard, Rev. 1952, Vol. VII, pp. 463-509.

More widely known is Galileo's forced recantation before the Inquisition than are the problems he found in earlier years. In 1493, he had to resign his professorship at the University of Pisa after he began his study of dynamics by dropping objects from the leaning tower of Pisa. (Levinger, Galileo, N. Y. 1952, pp. 25-34.) He was able to obtain and retain employment at the more liberal University of Padua at the price of keeping his theories secret (*ibid.* p. 51), as he wrote to his friend, the German astronomer, Johann Kepler, who shared Galileo's Copernican views of the universe. As always, the impact of suppression corroded the avenues of inquiry. Thus Galileo tells how frightened a group of scientists were when he tried to show them Jupiter's moons through the telescope; Baumgardt, *Johannes Kepler, Life and Letters*, New York, 1951, p. 86: "What do you say to the main philosophers of this school, who, with the stubborness of vipers, never wanted to see the planets, the moon or the telescope, although I offered them a thousand times to show them the planets and the moon. Really, as some have shut their ears, these have shut their eyes toward the light of truth."

Efforts to proscribe thought and association by economic outlawry have not always succeeded. In the beginning of the 18th century the "Occasional Conformity Bill" was defeated in the English Parliament and proscriptions against employment of religious

ated the reaction which they carried to its full fruition. Just as the Committee cannot escape responsibility by pointing a finger at private individuals, the motion picture respondents should not be allowed to avoid liability by sloughing off their responsibility on the Committee.

In a case arising out of an indictment under 18 U. S. C., Sec. 52 [now 18 U. S. C. 242 (see Appendix A)], making it a criminal offense to injure or destroy rights secured by the Constitution, it was charged that state officers formed and led a posse of civilians in pursuit of a Negro, without process or lawful cause, and "requested and directed" the civilians to shoot to kill this Negro, which they did. The assertion that "the acts complained of

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dissenters received a set-back. (*Select Documents for Queen Anne's Reign, Down to the Union with Scotland, 1702-1707*, selected and edited by G. M. Trevelyan, Cambridge, 1929, pp. 24-40.)

This nation has not been exempt from similar invasions of personal liberties. During a period beginning about 1827 there was a period of hysteria against Masons. Niles Weekly Register for March 21, 1829, reported that influential Masons found their businesses and professions so jeopardized that they recommended abandonment of chapters and lodges. Hammond, "The History of Political Parties in the State of New York", Vol. II Buffalo, 1850, pp. 369-375. In the next two decades the attack shifted. "'No Irish need apply' was a common sign on workshops and counting rooms." Samuel Eliot Morrison and Henry Steele Commanger, "Growth of the American Republic", Vol. I, New York 1942, p. 502.

The history of discrimination against Chinese in the state of California is peppered with taxes and other devices (all of which have been repealed or held unconstitutional) used to impede or completely obstruct the right of Chinese immigrants to complete either in jobs or business. *Yick Wo v. Hopkins*, 118 U. S. 356, is but the most famous of the cases relating to one of the statutes dealing with this question. See *Tin Sing v. Washburn*, 20 Cal. 534; *Chy Tung v. Freeman*, 92 U. S. 275; *People v. Downer*, 7 Cal. 170; Calif. Statutes 1860, p. 307; *Ibid.* 1863-1864, p. 492, Ibid. 1875-1876, p. 744; *Ibid.* 1877-1878, p. 529. (For a full discussion of this subject see Cross, "History of the Labor Movement in California", Berkeley, 1935, pp. 73-87.) The Courts enforcing the Constitution and the people deciding for liberty against hysteria brought an end to this episode.

are not shown to be those of the state or of its agents" was overruled by the court. It was held that the fact that the officers acted under color of law and that they "requested and directed" the wrongful acts was sufficient to render it governmental action; that the law applied regardless of the "instrument" or the "mode" utilized in achieving the result and regardless of whether it was done "by legislative, executive or judicial authority." *United States v. Trierweiler*, 52 Fed. Supp. 4; see also *United States v. Classic*, 313 U. S. 299; *Catlette v. United States*, 132 F. 2d 902; *Culp v. United States*, 131 F. 2d 93; *Picking v. Pennsylvania Ry. Co.*, 151 F. 2d 240; *Screws v. United States*, 325 U. S. 91.

The character of the assault involved here is different from that in the cited case; the principle of law is not. Here in many respects the wrong perpetrated is more serious. It is not a single assault against one individual; it is a continuing attack upon the status of a whole group of persons. Its consequences are felt not only by the entire industry and everyone it employs but the radiations extend far beyond. Lurking in the shadows is "the more subtle and immeasureable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time." *Watkins v. United States, supra,* 354 U. S. 197-198; *Cf.* Mr. Justice Frankfurter dissenting in *Garner v. Board of Public Works*, 341 U. S. 716, 726.[22]

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[22]In a Note on "Legislative Inquiry into Political Activity: First Amendment Immunity from Committee Interrogation", 65 Yale Law Journal 1159, 1179-80, the author deals with a situation in which a witness is compelled to disclose that he has voted for the Communist Party. "His name is placed on the committee's blacklist and on the lists of other similar groups. His friends, business associates and employer learn of his political preferences,

The procedures and methods followed by all respondents merge into an integrated pattern with these substantive objectives. A lack of due process infects the entire product. The California courts have incorporated this product into the law of the state.

E. When the 14th Amendment was incorporated into the fundamental law of the land, its sponsors knew that a new and mighty guardian for liberty, essential to the emancipation of mankind, had been brought into being. They did not know, nor could they, the multitudinous uses to which it would be put. The complex society of today has brought with it new and complex problems, sometimes as different from those of yesterday as the atom bomb is from the weapons that were the means of destruction used in the Civil War. They could see that men had been

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and the committee suggests that they take appropriate action." The author then goes on to discuss the forces thus set into motion.

". . . People who never voted in ways that would embarrass them realize now that they must vote with an eye to the possibility of public examination by an investigating committee.

"The result of the committee's action is to deter many of these people from lawful political activity in which they would otherwise have engaged. They know that they will run much less risk of exposure and embarrassment if they confine their political activity to those orthodox means and goals which are least likely to attract committee attention and, which, if revealed, would cause the minimum public hostility. By compelling Witness A to answer questions about his past voting, the committee has deterred other people from casting their ballots freely in the future, and has thus abridged the political process."

Cf. Note: "The Power of Congress to Investigate and to Compel Testimony", 70 Harv. L. R. 671, 675; Wilcox "Invasions of the First Amendment Through Conditioned Public Spending", 41 Cornell L. Q. 12, 45-6; Dembitz, "Congressional Investigations of Newspapermen, Authors and Others in the Field of Legality Under the First Amendment", 40 Minn. L. R. 517.

enslaved by being forced to work against their will; they did not foresee that men might be enslaved by being deprived of the opportunity to work.

But no more than any other section of the Constitution, was the 14th Amendment intended to apply only to the conditions and problems apparent at the time of its adoption. It announced the basic policy of the nation, not the police *regulation of the moment.* Just as a broad and general statute aimed at liberty offers the most pervasive threats to the people's rights, so the universal language of the 14th Amendment was calculated to assure its effectiveness wherever basic rights were imperiled. This command to the states is directed at substance, not form. Whenever and wherever the state declares and applies a rule of law which runs counter to the mandates which the long history of mankind's striving for liberty has integrated into the concept of due process, the 14th Amendment comes into play.

Man's genius for inventions to dominate natural processes does not exceed the genius of some men for the invention of devices for the domination, not by reason but by coercion, of men's minds. Thus the fight for man's freedom is never concluded. This case is one aspect of this fight directed at a modern device which must be rooted out of our land if liberty is to be preserved.

III.

The State Court Arbitrarily Denied Petitioners Any Protection for Their Federally Secured Right as Witnesses in a Federal Tribunal in Violation of the Supremacy Clause of the Constitution and the Due Process Provisions of the Fourteenth Amendment.

A. Another right which this monopolistic combination deliberately invaded and threatens continually to invade is the free and unfettered right of a citizen to appear as a witness before a Congressional legislative committee, when duly summoned, and claim the privileges granted to him by the Constitution of the United States. If not summoned as a witness by the Congressional Committee, although named therein, the right of the citizen to enjoy the protection of his privacy granted by the laws of the United States and the Bill of Rights and to refrain from voluntarily appearing before said Committee has been and is thus imperiled.

The Constitution, and the laws of the United States made in pursuance thereof, are the supreme law of the land, and the "judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Const. Art VI, Cl. 2. The Constitution places upon Congress the duty to legislate (Art. I). In the performance of that duty, Congress has provided for committee investigations of diverse nature, has made appropriations to cover the expenses and costs of such inquiries, has enacted laws for the compulsory testimony of witnesses, provided fees and compensation for their attendance, and punishment for their failure

to appear when duly summoned, or for refusal to give testimony pertinent to an inquiry. 2 U. S. C. 191-195. [See Appendix A.]

The powers of Congress in the conduct of legislative inquiries and the rights of citizens with respect to such legislative inquiries, under the Constitution, have been definitely interpreted by this Court. *Anderson v. Dunn*, 6 Wheat. (U. S.) 204, 231. See also *Kilbourn v. Thompson*, 103 U. S. 168, 195; *McGrain v. Daugherty*, 273 U. S. 135, 176; *Quinn v. United States*, 349 U. S. 155, 161. "The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged." *Watkins v. United States*, 354 U. S. 178, 188.

It is this delineation of the powers and limitations of Congressional legislative investigations which at the same time fixed the duties and rights of witnesses in such federal forums. Specifically, none of these petitioners were required to appear before the House Committee on Un-American Activities unless duly "summoned" to appear. There are many reasons best known to the Committee why the Committee would not wish to summon the witness. *Cf., Mesarosh v. United States*, 352 U. S. 1; 2 U. S. C. 192. Those petitioners who were summoned before the House Committee could properly decline to answer any question not "pertinent" to the question under inquiry. 2 U. S. C. 192; *Watkins v. United States*, 354 U. S. 178. They were also entitled to decline to answer questions the answers to which might tend to incriminate

them or to reveal their political beliefs, opinions and associations., *Blau v. United States,* 340 U. S. 159; *Quinn v. United States,* 349 U. S. 155; *Emspak v. United States,* 349 U. S. 190; *Watkins v. United States, supra.* The petitioners also had the right to claim the great privileges afforded them by the First and Fifth Amendments without any arbitrary or insidious inferences drawn therefrom that petitioners were criminals or lacking in moral character, truth or candor. *Slochower v. Board of Higher Education,* 350 U. S. 551; *Konigsberg v. State Bar of California,* 353 U. S. 252.

If a monopoly, controlling all employment opportunities in an entire industry, can take it upon itself by concert of agreement and overt conduct to deprive citizens entirely of their right to work in their chosen calling solely because of the exercise of their undoubted rights as witnesses in a Congressional legislative inquiry, it would appear clear that such monopolistic combination is assuming powers that belong peculiarly to the Government of the United States in whose tribunals the proceedings are had. It is certainly essential to the impartial and efficient administration of lawmaking in the Congress of the United States, that witnesses should be able to testify, if summoned by the federal body, unrestrained by fear of governmental or private action which effectively punishes or disables the witnesses from enjoying the fundamental right to earn the means whereby to live. The power of inquiry by Congressional committees and the opportunity to obtain constitutionally permissible information would be greatly embarrassed and impeded if witnesses were liable to lose their right to pursue their chosen professions at the hands of a monopolistic combination, requiring the surrender of all statutory and constitutional privileges in such federal tribunal as a condition of the exer-

cise of the right. The witness who has testified, or who refrains from testifying, before a Congressional committee is accountable for the truth of his testimony and the claim of his privileges only to the United States. Under the supremacy clause of the Constitution, it is therefore unlawful for private individuals as well as State officials to interfere with the exercise of this federal right by depriving, or threatening to deprive, persons who exercise such right of all opportunity to follow their chosen calling.

The importance of the right of witnesses to testify in federal forums free from interference, punishment and disabilities, and threats thereof, has been emphasized in the decided cases. See *In re Quarles*, 158 U. S. 532, *supra*, at p. 537; *Motes v. United States*, 178 U. S. 458. In *Foss v. United States*, 266 Fed. 881 (C. A. 9, 1920), it was held that a witness had a right to be protected in giving testimony before the land office in a contest which involved the right of entrymen under the land laws of the United States. "The power which is delegated to the federal government to dispose of the public lands includes the power to hear and determine contests in the land office, and the power to compel witnesses to testify in such contests, and the power to protect them while so doing, and in all such contests the United States is a party." *Supra*, at p. 883. See also, *Hawkins v. United States*, 293 Fed. 586 (C. A. 5, 1923); *Hoffman v. United States*, 68 F. 2d 101 (C. A. 10, 1933); *Nicholson v. United States*, 79 F. 2d 387 (C. A. 8, 1935).

Moreover, the burden placed by these respondents upon petitioners' exercise of their rights as witnesses before the Congressional legislative Committee was not slight. It involved the surrender of exemptions from testifying which the Constitution affords for the benefit of all per

sons in the United States. As this Court stated in *United States v. Bryan*, 330 U. S. 323, "every such exemption is grounded in a substantial individual interest which has been found, through centuries of experience, to outweigh the public interest in the search for truth." *Supra*, at p. 331. Thus, what the Constitution of the United States permits as a matter of social and historical national policy, this monopoly forbids and punishes, immunized in its conduct by the judicial arm of the State. Yet, the exercise of the privilege of the First Amendment has been recognized as one of the indispensable freedoms necessary in a government of laws, one of the surest guarantees against official arbitrary conduct in our constitutional system. See the discussion in Point II, above p. 51. See also, *Watkins v. United States*, 354 U. S. 178; *Sweezey v. New Hampshire*, 354 U. S. 234. And with respect to the privilege granted by the Fifth Amendment, this Court has recognized the exercise of the Privilege as "one of the most valuable prerogatives of the citizens." *Slochower v. Board of Higher Education*, 350 U. S. 551, 557.[23]

Thus, it appears plain that the right of witnesses freely to claim their constitutional privileges in a Congressional

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[23] It "registers an important advance in the development of our liberty—'one of the great landmarks in man's struggle to make himself civilized'." *Ullman v. United States*, 350 U. S. 422, 426. "The reasons for its inclusion in the Constitution—and the necessities for its preservation—are to be found in the lessons of history." *Quinn v. United States*, 349 U. S. 155, 161. "The great right" must be fully recognized by legislative committees or otherwise the right "might be effectively frustrated by private pressures". *Emspak v. United States*, 349 U. S. 190, 195. "Recent re-examination of the history and meaning of the Fifth Amendment has emphasized anew that one of the basic functions of the privilege is to protect *innocent* men." *Grunewald v. United States*, 353 U. S. 391, 421. See also, Griswold, *The Fifth Amendment Today* (1955), Wigmore, *Evidence* (3rd ed.), Section 2250; Cooley, *Constitutional Limitations* (8th ed., 1927), Vol. 1, p. 647.

legislative inquiry is a right secured by the Constitution and the laws of the United States. Yet, the court below denied any legal or equitable relief from a conceded highly injurious invasion of this federal right. It did so despite the plain provisions of the Constitution and the manifest intent of Congress that judicial protection shall be afforded for the enjoyment of any right or privilege secured by the Constitution or laws of the United States. 18 U. S. C. 241-242; 42 U. S. C. 1985. (See Appendix A.) A right secured by the Constitution as an attribute solely of national citizenship is peculiarly a right protected from individual invasion, for here it is unnecessary to point to the Amendments of the Constitution as the source of the protected right. It is the supremacy clause which applies, and private individuals as well as officials are bound to refrain from injuries to rights granted by the Constitution or the laws of the United States. Thus, in numerous diverse situations private persons have been restrained or punished for invading federally protected rights. See *Brewer v. Hoxie School District No. 46*, 238 F. 2d 91 (C. A. 8, 1956), and the cases cited therein at pp. 98-105.

Clearly it was the duty of the state court to protect the exercise of this federal right when its ordinary jurisdiction was invoked as in the case herein.

> "Upon the State Courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for the judges of the State courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United States made

> in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, 'anything in the Constitution or laws of any State to the contrary notwithstanding.' If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination." *Robb v. Connolly,* 111 U. S. 624, 637.

See also, to the same effect, *United States v. Bank of New York & Trust Co.,* 296 U. S. 463, 479; *Mooney v. Holohan,* 294 U. S. 103, 113; *Second Employers' Liability Cases,* 223 U. S. 1, 56-57; *Cloflin v. Houseman,* 93 U. S. 130, 137-143; *Testa v. Katt,* 330 U. S. 386, 389-394. And see, *Brinkerhoff-Faris Trust & Sav. Co. v. Hill,* 281 U. S. 673, 680-682; *Angel v. Bullington,* 330 U. S. 183, 188; *Ward v. Love County,* 253 U. S. 17, 21; *Laurence v. State Tax Commission,* 286 U. S. 276, 282; *Davis v. Wechsler,* 263 U. S. 22, 24.

B. The court below effectively denied the claim of federal right herein, along with the other fundamental rights set forth in the complaint, by its holding that petitioners had no standing to sue because of failure to allege the existence of a specific contract or the reasonable prospect of one. However, in rejecting the claims of petitioners, the court below attempted to attenuate the claims by reading some of the allegations quite differently than they were stated. Since this tangential ruling actually emphasizes the arbitrary deprivation of petitioners' liberty and property without due process of law, we treat the matter here.

The court below held that certain allegations were "misleading and evasive" [R. 69]. The court reached this conclusion by the following process: It took "judicial notice" of the reports and proceedings of the House Committee [R. 67]. It then observed that 18 of the petitioners had been asked by the Committee "whether he or she was then or ever had been a member of the Communist Party" [R. 67], and that refusal to answer had been based on the privilege against self-incrimination. It noted that each of the 5 other petitioners "was stated to be a Communist by a witness before the Committee and on the same grounds refused to appear and state whether he was then or ever had been a member of the Communist Party" [R. 66]. It will be observed that the court below failed to "notice" the full scope and nature of the inquiries put to petitioners, or the full extent of their claims of constitutional privileges. See Statement of the Case, p. 7, and appendix, pp. 77-78.

From its reading of the proceedings as aforesaid, the court below concluded that the questions which petitioners refused to answer, or the information which they refused to voluntarily appear and furnish "had nothing whatever to do with their political affiliations, associations, or beliefs, but concerned their membership in a conspiratorial and revolutionary junta, one of whose objections is the overthrow of our government by force and violence, a malignant force which menaces the very existence of the government" [R. 68]. The court also held that it necessarily followed that the object of the agreement was not to limit political activities or beliefs, as alleged in the complaint, for "political" implies "orderly conduct of government, not revolution" [R. 69].

It is, of course, plain that this Court must read and interpret the allegations of a complaint for itself when-

ever there is a claim of denial of right under the federal Constitution. *Boyd v. Thayer,* 143 U. S. 135, 181. It is also clear that the aforesaid holdings were not the grounds of the ruling of the court below [R. 75]. Nevertheless, the opinion in these respects is so palpably erroneous, it is respectfully submitted, and appears to have motivated to some degree the final decision denying all relief to these petitioners, that some comment would appear necessary.

From the standpoint of due process—the protection of the individual against arbitrary action—it would appear that the court below pressed the concept of notoriety beyond all reasonable, rational and legal limits. *Cf., Ohio Bell Telephone Co. v. Pub. Utilities Comm'n of Ohio,* 301 U. S. 292, 300-302.

The court below takes judicial notice of the fact that petitioners refused or failed to answer questions concerning Communist Party membership. This, according to the Court, "had nothing whatever to do with their political affiliations, associations, or beliefs." Relying on the concurring opinion of Mr. Justice Jackson in *American Communications Assoc. v. Douds,* 339 U. S. 382, the Court held, that these questions concerned "membership in a 'conspiratorial and revolutionary junta'" dedicated to the violent overthrow of the government. It followed according to the Court that "contrary to allegations of the complaint" the conspiracy charged therein was not designed to limit or control political activities [R. 68].

The Court below, relying on the opinion of a single Justice, ignored the views of the majority of this Court in that same case. There it was recognized that the requirement of the non-Communist oath for officers of unions desiring the services of the National Labor Re-

lations Board will give men who hold union offices "little choice but to renounce communism or give up their offices." And that by this statute "Congress has undeniably discouraged the lawful exercise of political freedoms * * *" In *Schware v. Board of Bar Examiners*, 353 U. S. 232, 244, 246, this Court was confronted with a finding of another state court comparable to that of the California Court. Mr. Justice Black, speaking for the court, disposed of this finding in the following manner. "The court assumed that in the 1930's when petitioner was a member of the Communist Party, it was dominated by a foreign power and was dedicated to the violent overthrow of the Government and that every member was aware of this. It based this assumption primarily on a view of the nature and purposes of the Communist Party as of 1950 expressed in a concurring opinion in *American Communications Assoc. C. I. O. v. Douds*, 339 U. S. 382, 422. However that view did not purport to be a factual finding in that case and obviously it cannot be used as a substitute for evidence in this case to show that petitioner participated in any illegal activity or did anything morally reprehensible as a member of that party. . . ."

This Court has never held that the entire Communist Party is a conspiracy to forcibly overthrow the Government. It did not so hold in *Schneiderman v. United States*, 320 U. S. 118, nor in *Dennis v. United States*, 341 U. S. 494. The Congress of the United States has stated: "Neither the holding of office nor membership in any Communist organization shall constitute per se a violation . . . of any . . . criminal statute." 50 U. S. C. 783(f). (See Appendix A.) Mr. Justice Reed stated in *Bridges v. United States*, 346 U. S. 209, 234, that "there is no necessary identity in law between Communist Party members" and persons who advocate the forcible over-

throw of the Government. See also *Wieman v. Updegraff*, 344 U. S. 183, 190, 191; *Schware v. Board of Bar Examiners*, 353 U. S. 232, 246; *Konigsberg v. State Bar of California*, 353 U. S. 252, 267; *Yates v. United States*, 354 U. S. 298, 336.

It was, therefore, wholly arbitrary for the court below to conclude that a question concerning membership, past and present, in the Communist Party has "nothing whatever to do" with political associations or beliefs, and to conclude that the question really was whether the witness was a member in a "conspiratorial and revolutionary junta," a question, it should be observed, which was never asked. To construe a pleading in this way so as to deny all access to the courts for relief from a wrongful invasion of fundamental rights would, it is submitted, be a sheer denial of due process of law under the Fourteenth Amendment.

Nor, it is submitted, would the court below be justified in inferring that petitioners were members of such "conspiratorial and revolutionary junta" solely because they declined to answer the inquiries upon First Amendment and Fifth Amendment grounds. That no such inference could be drawn from a claim of the First Amendment is plain from such decisions as *Konigsberg v. State Bar of California*, 353 U. S. 252, and *Watkins v. United States*, 354 U. S. 178, if citation were needed. As to claim of the Fifth Amendment, this Court has held again and again that the claim is for the innocent and no inference of wrongdoing can be drawn from an exercise of the privilege. See, *Slochower v. Board of Higher Education*, 350 U. S. 551, 557; *Ullman v. United States*, 350 U. S. 422, 426; *Quinn v. United States*, 349 U. S. 155, 164; *Noto v. United States*, memo. op. of Harlan, Circuit Justice, 76 S. Ct. 255, 257, 100 L. Ed. 1518.

The complaint herein alleged facts which showed a plain invasion of petitioners' fundamental rights. These facts were not denied by respondents, and it was arbitrary to interpret the facts otherwise than they were stated. In denying petitioners any relief for the wrongful invasion of their basic rights, the state court acted contrary to the constitutional command. The "very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury v. Madison*, 1 Cranch. (U. S.) 49, 58.

IV.

The Ruling of the Court Below Denying Petitioners All Remedies for an Admittedly Wrongful Invasion of Their Constitutional, Economic and Civil Liberties Solely Because of the Failure to Plead the Existence of a Specific Contract or the Reasonable Prospect of One Arbitrarily Denied Petitioners the Equal Protection of the Laws in Violation of the Applicable Provisions of the Fourteenth Amendment.

A. In its opinion the California District Court of Appeal outlines its reasoning: The injury claimed according to the court, is "loss or prevention of future or prospective employment in the motion picture industry"; the pleadings allege neither a "certain" nor a "definite prospect" that plaintiffs would obtain employment at the time "of the alleged tort"; therefore no injury is averred and no cause of action is stated. "The most that is alleged is a hope or expectation of employment" [R. 76]. As applied to the facts of this case, this syllogism has the following import: The right to obtain and retain em-

ployment is protected under certain circumstances; under others it is not. Persons who assert that they have been deprived of this right are divided into two classifications. Those who at the time that the wrong is inflicted have contracts of employment or definite prospects thereof are entitled to and will receive protection from the judiciary. Others who have no such contract or immediate prospect are without any remedy; this is so even though they do have existing professions or occupations in a particular industry in which they have had many years experience and acquired high standing, from which they are totally excluded by a monopolistic conspiracy. Petitioners assert that this categorization is arbitrary and denies them the equal protection of the laws guaranteed by the Fourteenth Amendment.

The thesis of the State Court appears to be that the loss of a contract of employment or of a definite prospect of obtaining one produces injury, but the mere total exclusion from any possibility of ever obtaining a contract causes none. An individual who is fortunate enough to have a contract or a definite prospect of one receives protection for the period of the actual or prospective contract. Thereafter if a combination such as that of respondents here permanently closes all avenues to any actual or prospective contract of employment for any individual, he can get no relief. Thus the lesser aspect of the right to work is protected while the same right in its greatest and most significant aspect is reduced to a cipher. Such a classification is capricious.

The right to engage in a profession or occupation is not dependent upon the existence of a contract or reasonable prospect of obtaining one. The state may condition that right upon the obtaining of a license, requiring, the

applicant to measure up to reasonable standards. Such a license clothes its holder with the right to pursue contracts—to compete for work with others in the same sphere of economic activity. Petitioners possess that legal right without a license; they hold the same legally protected right to pursue their professions and occupations in their fields as licensees possess in licensed areas. It will scarcely be disputed that the refusal to grant or the revocation of a license to engage in a profession or occupation causes injury even though the only loss which is suffered is the foreclosure of the opportunity to seek and contract for work. Denial of the right to obtain a license for the purpose of entering upon a professional career causes injury and accordingly such a license may not be denied arbitrarily. *Cf. Konigsberg v. State Bar of California*, 353 U. S. 252. The injury is certainly no less for individuals banished from a profession or occupation (requiring no license) to which they have devoted long years and in which they have achieved considerable success.

Refusal to issue a fishing license to a Japanese alien has been held to be a denial of equal protection. *Takahashi v. Fish & Game Comm.* 334 U. S. 410. Without the license it was illegal for the applicant to fish either as an employee or as an independent business man. There was no allegation that the applicant had a job or a reasonable prospect of obtaining one or that he was in business for himself. This, of course, was immaterial because the wrong lay "in excluding any or all aliens who are lawful residents of the state from making a living by fishing in the ocean off its shores while permitting all others to do so." 334 U. S. at 421. More recently this Court has said: "A state cannot exclude a person from the

practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection clauses of the Fourteenth Amendment." *Schware v. Board of Bar Examiners*, 353 U. S. 232, 238. If exclusion from an occupation were not injurious the State's proscription would contravene no constitutional principle.

One who loses a contract or a prospect of one may live to contract another day. He has lost a job, not all opportunity for a livelihood in his chosen work. Under California law as declared by the Court below, the loss of one job is remediable; the loss of all future employment is not. Were the California courts to afford a remedy for a *broken* limb, but none for *loss* of one, their position would be neither more nor less reasonable than it is in this case. For the right to work and pursue one's chosen calling is a fundamental liberty far surpassing in constitutional significance the maintenance of individual contracts. Its destruction results in injury far more reaching than does interference with a single contract or a prospect of one. *Truax v. Raich*, 239 U. S. 33; *Allgeyer v. Louisiana*, 165 U. S. 578; *Meyer v. Nebraska*, 262 U. S. 390; *Yick Wo v. Hopkins*, 118 U. S. 356, 370.

The equal protection clause of the Fourteenth Amendment guarantees all persons the equal enjoyment of "personal and civil rights" including the right "to pursue their happiness and enjoy property." The redemption of this pledge lies in "like access to the court for the protection of their persons and property, the prevention and redress of wrongs. . . ." *Barbier v. Connolly*, 113 U. S. 27, 31, cited in *Abe v. Fish & Game Comm.*, 9 Cal. 2d 300, 303-4.

That equal protection does not forbid reasonable classification has been established by a long series of cases. However, only where there are "genuinely different characteristics of the business involved" is classification without discrimination possible. *Morey v. Doud*, 354 U. S. 457, 466. The State may not exclude an individual from a profession "merely because he was a Republican or a Negro or a member of a particular church" or political party. *Schware v. Board of Bar Examiners*, 353 U. S. 232, 239. The opportunity of earning a livelihood in a particular occupation or profession may be refused to those who cannot meet standards which are necessary to protect the public against injury. It may not constitutionally be denied to members of minority groups because of their unpopularity. Protection against economic competition or the desire to insure private gain cannot justify foreclosing anyone's opportunity to work for a living. Otherwise statutes designed to eliminate the competition of aliens or of cheap labor would have withstood the test of constitutionality. *Cf., Yick Wo v. Hopkins, supra; Truax v. Raich, supra.*

Among the difficulties encountered in any attempt to sustain respondents' position that there is no denial of equal protection of the laws here is the limitless extent of the doctrine urged and its ultimate consequences. What was said in *Truax v. Raich, supra*, has equal force here. "The restriction now sought to be sustained is such as to suggest no limit to the state's power of excluding aliens from employment if the principle underlying the prohibition of the act is conceded." 239 U. S. at 43. If an individual without a contract of employment or a prospect of one suffers no legally cognizable injury by being precluded from the opportunity of securing work,

then all of the employers in the State of California may legally agree not to employ any of these petitioners or any other persons whose political or religious views are deemed distasteful. Without inflicting injury on anyone, the extension of the conspiracy charged here could limit the opportunity to compete for jobs in the motion picture industry and in every other major industry in the state to "Anglo-Saxons" who had never taken a stand more controversial than the pledging of allegiance to the Constitution of the United States and who had never participated in associations more suspect than the Sons and Daughters of the American Revolution.

An "attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date" has been declared by this court to violate the equal protection clause. *Mayflower Farms, Inc. v. Ten Eyck*, 297 U. S. 266, 274; *Morey v. Doud*, 354 U. S. 457. Here the economic discrimination is not between those who are about to enter and those who are already established in an industry; it is between individuals in an industry who at a given time have contracts or prospects of contracts and those who at that moment have none. The ones with the direct prospects or contracts receive some protection against a conspiracy designed to drive them out of the industry. Those not so lucky as of the time the conspiracy becomes effective against them and who can therefore never anticipate even a prospect of a contract, have no remedy. The economic disadvantage to the latter as compared with the former when the right of both to a livelihood is the object of a conspiracy cannot be justified.

Viewed from another perspective, the differentiation in treatment grants immunity to some wrong-doers while subjecting others to legal sanctions without any reasonable basis for such discrimination. Indeed, the greater wrong is exempted for liability while the lesser confers a basis for the recovery of all damages suffered. A single individual interfering with the realization of the prospects for a single contract must face the consequences of his wrongful act. A monopolistic combine which excludes a whole class of persons from all opportunity of ever obtaining any employment in an entire industry may not be held responsible at all. This combination may continue with impunity and expand its proscription to embrace all who fail to conform to the standards of belief and association which the combination imposes upon the industry. The immunizing of such wrong-doers is part of a classification process which the Fourteenth Amendment does not tolerate.

B. This arbitrary result is achieved through the process of riding roughshod over the established law of the state—both statutory and judicial. This is not a case in which a court has changed its construction of the law. This is not one in which an established legal principle has been abandoned and another substituted.[24] Starting with the proposition that these petitioners had engaged in conduct which entitled them to no protection, the Court, by treating rules of law as non-existent, refused to give petitioners the benefit of the established state law which

[24] This was no mere over-sight or judicial error. The principles and authorities which the court totally disregarded were cited in Petitioners' briefs.

would have required a ruling favorable to them. *Cf., McFarland v. American Sugar Ref. Co.*, 241 U. S. 79, 86.

(1) By reason of the conspiracy which prevented petitioners from effectively seeking employment in the motion picture industry, they have been barred from the prospect of securing any contract of employment providing for a specified rate of compensation; therefore they cannot with specificity allege the amount of damages suffered. All of the other elements essential to a cause of action are set forth in the complaint with unchallenged certainty. The wrong in its various aspects is spelled out. The injury —the total deprivation of the right to pursue an occupation plus impingements upon First Amendment rights— is equally definite. The only uncertainty arises out of the fact that the wrongdoers have by their wrongful action made the determination of the exact amount of damages suffered difficult. The rule applicable to such a situation has been stated by the California Supreme Court in *Speigle v. Board of Fire Underwriters*, 29 Cal. 2d 34, 40: "The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of uncertainty which his own wrong has created. . . . That principle is an ancient one . . . and is not restricted to proof of damage in antitrust suits, although their character is such as frequently to call for its application."

Under California law recovery of damages is allowed for a wrong resulting in inability to follow an occupation, without regard to the existence of a contract or a prospect of one. *Dotson v. International Alliance etc. Employees*, 34 Cal. 2d 362, 374. This is the rule where disability results from personal injuries. *Osterude v.*

Almquist, 89 Cal. App. 2d 15, 20; *Tornell v. Munson*, 80 Cal. App. 2d 123, 125; *Shaw v. Southern Pacific R.R. Co.*, 157 Cal. 240. A similar rule has been applied in libel cases where the words tend to injure an individual in his occupation. *Washer v. Bank of America*, 21 Cal. 2d 822, 829. The uncertainty of damages for loss of work is no greater in the cited instances than the present one.

Damages are allowed for loss of good will in a business even though there has been no interference with existing or prospective contracts and damages are not capable of ascertainment in any precise manner. *Ross v. Frank W. Dunn Co.*, 119 Cal. App. 2d 690, 702; *Beckett v. City of Paris Dry Goods Co.*, 14 Cal. 2d 633; *Phalanx Air Freight v. Nat. etc. Freight*, 104 Cal. App. 2d 771, 776. Here the petitioners over a period of many years have established a reputation for the excellence of their work and have achieved a high standing in their professions and occupations in the motion picture industry. The value of these assets to an employee cannot be distinguished from the value of good will to a going business. To permit the recovery of damages for one and to deny them for the other is a policy which can find no support in reason and which discriminates against these petitioners.

The same three judges who decided the case below had held that an agreement not to compete (one falling within the specified exception to illegal restraints on trade) created a basis for a money judgment even though damages could not be measured with exactness. *Laird v. Steinman*, 97 Cal. App. 2d 781, 786. The distinction between wrongful competition and a wrongful refusal to permit competition where specific damages can

not be ascertained in either instance, is so tenuous that an allowance of damages in one instance and the denial in the other is patently unfair.

There is also an established California rule that the success of an enterprise in the past "provides a reasonably certain basis for the ascertainment of the probable loss . . ." *Hoag v. Jenan*, 86 Cal. App. 2d 556, 564; *Stott v. Johnson*, 36 Cal. 2d 864, 876. Thus it has been said that where an individual by reason of another's wrong is rendered "less or wholly incapable" of engaging in a business occupation in which the plaintiff has been previously engaged" he may recover damages therefor predicated upon all relevant data including the nature of the work or business previously engaged in, petitioners' earnings therefrom, what the average earnings in the past were and other relevant circumstances. In such cases, damages flow not from a special loss of contracts or relationships but from the fact that the wrong has diminished petitioner's ability to compete in the marketplace and has deprived him of the opportunity to contract for his services and to obtain earnings therefrom. *Shaw v. Southern Pacific RR. Co.*, 157 Cal. 240, 243-5. Here it is conceded that petitioners have been employed in the motion picture industry and have acquired a valuable status therein. Nevertheless, they were denied the opportunity to prove the damages which they have sustained by the same kinds of evidence admissible in other cases in which the injury suffered is exclusion from an occupation by reason of physical injury or some other wrong. This inequality of treatment has no public interest to support it and must fall before the demands of the Constitution.

Finally, under California law where there is a breach of a legal right, the injured party is entitled at least to nominal damages, even though no actual damages can be proved. *Ross v. Frank W. Dunn Co.*, 119 Cal. App. 2d 690, 700. *Cf., Sterling Drug, Inc. v. Benatar*, 99 Cal. App. 2d 293, 400; *Treadway v. James*, 57 Cal. 137; *Creighton v. Evans*, 15 Cal. 9, 11; *Bromberg v. Signal Gasoline Corp.*, 130 Cal. App. 469, 471. The basis for this rule is that "The law in the absence of proof of actual damage will presume it where the rights of the plaintiff have been violated." *Pleasants v. North Beach and M. R.R. Co.*, 34 Cal. 586. Thus in an action based upon an attempt to destroy plaintiff's business by false statements, a judgment of $100.00 general damages and $2,000.00 exemplary damages was sustained, although there was nothing to indicate that a single customer had been lost as a result of the wrong. *Finney v. Lockhard*, 35 Cal. 2d 161. The complaint here also alleges that petitioners are entitled to exemplary damages. [R. 37.]

No consideration was given by the Court below to this principle which it did not purport to override. The refusal to apply the principle to these petitioners and to allow them to recover at the very least nominal damages (assuming that they could not prove actual damages under the California law) plus such exemplary damages as a judge or jury might deem appropriate discriminatorily placed petitioners in a specially created classification and deprived them of equal protection of the law.

(2) Damages is not the only relief for which petitioners prayed or to which they were entitled. They also asked for an injunction against interference with their right to work. The California law is settled that

when damages are difficult or impossible of measurement, an injunction will issue where a wrong has been inflicted, "that ought not to be submitted to on the one hand or inflicted on the other." *Anderson v. Souza*, 38 Cal. 2d 825, 835; *Thome v. Honcut Dredging Co.*, 43 Cal. App. 2d 737. In this connection it has been held that anything which invades a legal property right causes injury thereby as a matter of law regardless of whether it causes substantial or ascertainable damages and that injunctive relief must be granted in those cases. *Selsenthal v. Warring*, 40 Cal. App. 119, 129; *Pellissier v. Whittier Water Co.*, 59 Cal. App. 1, 6-7. In such a case if the wrongdoer contends that no damage can result from his conduct, he, having created the possibility of damage, bears the burden of proving that no damage will occur if he wishes to avoid an injunction. *Peabody v. City of Vallejo*, 2 Cal. 2d 351, 381; *Smith v. Wheeler*, 107 Cal. App. 2d 451, 455-6. The failure to grant petitioners injunctive protection has not been and cannot be justified while the requirement of equal protection is the law of the land.

(3) Clearly it was not the intent of the Court below to modify all of the well-established principles of law discussed above, nor did it have the right to overrule the decisions of the Supreme Court of the State on this point. *Warner v. Steamship Uncle Sam*, 9 Cal. 697; *People v. McGuire*, 45 Cal. 56; *Janofsky v. Garland*, 42 Cal. App. 2d 655; *Melancon v. Disney*, 127 Cal. App. 2d 213; *Christina v. Roxes*, 100 Cal. App. 2d 46; *Stone v. San Francisco*, 27 Cal. App. 2d 34.

In *Yick Wo v. Hopkins*, 118 U. S. 356, 373-4, the Court said: "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and ad-

ministered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

What the Court below did here on point after point was to refuse to consider or to apply for the benefit of these petitioners the established California law. Only thus was it possible for the Court to reach the incongruous and discriminatory conclusion that interference with the prospect of a single contract causes injury but that total deprivation of all opportunity to follow a profession in which one has earned high repute results in no injury which the law will protect. The withholding from the petitioners of the benefit of settled and deep rooted legal principles paved the way to the arbitrary classification which became the Court's justification for the refusal of all relief thereby denying petitioners the laws equal protection.

C. Section 1101 of the California Labor Code prohibits any employer from "controlling or directing, or tending to control or direct the political activities or affiliations of employees." Section 1102 of the same code provides: "No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity." (See Appendix A.) That the employers in this case did precisely what these provisions of the California law forbid is admitted [Para. VII of the first cause of action of the complaint, R. 37].

In its decision, the District Court of Appeal makes no reference to these statutory provisions except obliquely through the citations of *Lockheed Aircraft Corp. v. Superior Court*, 28 Cal. 2d 481, 485 for the proposition that "the word 'political' implies 'orderly conduct of government not revolution'." [R. 69.] An examination of the purpose for which this case was cited reveals another aspect of the arbitrary classification of petitioners and of the denial to them of the equal protection of the law. In the cited case, the Supreme Court of the State, for the first time construing Section 1101 of the California Labor Code, held that the political activities protected by the section did not include the advocacy of the overthrow of the government by force or violence, and that the section was concerned with activities "related to or connected with the orderly conduct of government and the peaceful organization, regulation and administration of the government." 28 Cal. 2d at 481. This principle of law, declared by the California Supreme Court, was applied by the Court below to the present case in the following manner. The court took judicial notice of the fact that petitioners had refused to answer questions concerning membership in the Communist Party. These questions, the court said, did not relate to political affiliation but concerned rather participation in a "revolutionary junta" [R. 68].

This classification of plaintiffs' conduct before the committee is arbitrary and denies to the petitioners the equal protection of the laws. See *supra*, p. 81. Also it undoubtedly explains the court's lack of reference to Section 1101 and 1102 of the California Labor Code; for if petitioners were members of a class who were not entitled to the protection of those code sections, refer-

ence to them was unnecessary. By thus classifying petitioners and denying them the protection of these provisions of the law of the State of California, the Court ran counter to the requirements of the Fourteenth Amendment, guaranteeing equality before the law to petitioners.

V.

The Attempt of the Respondents to Justify Their Conduct as a Matter of Law Is Baseless Under the Constitution in the Light of the Posture of the Proceedings and the Constitutional Protection Afforded Petitioners Against Total Denial of Remedies by the State for Admitted Wrongful Interference With the Exercise of Petitioners' Federal Rights.

While the respondents maintained, in opposition to certiorari, that petitioners had not shown any "legally protected interest" which had been invaded, and that the complete denial of any relief from respondent's wrongdoing by the dismissal of the complaint was not "state action", they nevertheless, in addition, asserted below and in their brief in opposition to certiorari that all their admitted conduct as aforesaid was justified *as a matter of law*. Some discussion of respondents' additional attempt to avoid a trial on the merits warrants analysis here.[25]

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[25]Before reaching the substance of respondents' arguments, it should be noted that ordinarily the question as to whether the tortious acts of a party are "justified" is dependent upon the facts of a particular case, facts which must be pleaded and proved. "It has been considered that, *prima facie*, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law, whatever may be the form of pleading, requires a justification if the defendant is to escape." Mr. Justice Holmes in *Aikens v. Wisconsin*, 195 U. S. 194, 204. "As in other instances where justification is required, the burden of proof was upon

The gravest constitutional questions are raised by the attempt of respondents to justify their tortious invasion of petitioners' basic rights. If, as a matter of law, the judicial arm of the State were to hold that respondents were justified in doing all that they admit they did as alleged in the complaint, serious questions of deprivation of liberty and property without due process of law and the denial of equal protection of the laws would be presented. The issue was of course not reached here in view of the ruling of the court below. In fact, however, it will be found that respondents' arguments are unsubstantial and largely directed to the trier of the facts. Respondents have admitted their wrongdoing, but they have not yet pleaded or proved their justification. It is the action of the State which relieved them from that burden.

What the respondents in substance argued below was this: As a matter of law, it can be reasonably inferred that the concerted agreement to exclude persons from employment in an industry because of refusal to answer questions concerning beliefs, political affiliations and associations upon First Amendment and Fifth Amendment grounds was in reality an agreement to exclude persons who are "not only unwilling to disclaim Communist membership but who by that very refusal stamped themselves

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the defendant to establish the existence of such an occasion." *Owen v. Williams*, 322 Mass. 356, 360, 77 N. E. 2d 318, 321. "The courts have not attempted to formulate a rule by which justification or lack of justification may be determined, but have said in general the issue is largely one of fact for the jury; the standard being reasonable conduct under all the circumstances of the case." *Carnes v. St. Paul Union Stockyards Co.*, 164 Minn. 457, 463, 205 N. W. 630, 632. See also 84 A. L. R. 43, 79; 96 A. L. R. 2d 1227, 1263. This was of course explain why respondents were driven below to urge that their conceded conduct was justifiable as a matter of law.

in the public mind as being Communists in fact" (Resp. Br. p. 55). It should be reasonably inferred therefore, argued respondents, that the inevitable result of such public attitude would be "loss of patronage and business reputations"; that the "industry" was committed to cooperation with the House Committee and that if this agreement were not made, "the cooperative intention of the industry would be made to seem hypocritical cant" (Resp. Br. p. 57); that the agreement, as reasonably inferred, was "further justified as an appropriate means of guarding against the injection of Communist propaganda into motion pictures" (Resp. Br. p. 59).[26] It followed, according to respondents' argument, that this agreement was no more than an agreement among employers to establish "general and non-discriminatory qualifications for employment" (Resp. Br. p. 31); that "an employee's moral character, obedience to law and private conduct are matters of proper concern to his employer" (Resp. Br. p. 38); that respondents were seeking to protect "freedom of enterprise" and "the interest of society generally in a state of law and order" (Resp. Br. p. 40); that the agreement was an appropriate method to "induce obedience to law as against lawlessness" (Resp. Br. p. 40): that petitioners were not seeking by their action to protect their fundamental "right to work", but were seeking "to be free to engage in activity which may lead to criminal prosecution without suffering the social and economic consequences which usually attend that kind of conduct" (Resp. Br. p. 41).

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[26]In this argument, Respondents virtually admit that they have joined with the Committee to blacklist those individuals attacked by the Committee.

It should be observed that these were not arguments made by an individual employer in a lawsuit for breach of an employment contract. These arguments were advanced by an admitted monopolistic combination controlling all employment opportunities in the industry. These are arguments made to justify all the conceded injuries to petitioners committed by respondents' wrongdoing as set forth in the complaint, and these arguments are made, not after pleading and proof at a trial, but upon demurrer to petitioners' claims for legal and equitable relief. Moreover, the claimed justification cannot be reconciled with the rights, privileges and liberties to which the Constitution is committed.

It is not denied that citizens may lawfully claim their constitutional privileges before the Committee or refrain from appearing therein unless duly summoned. What the respondents are asking a court of law to do is to infer that when a person claims his constitutional privileges before the Committee with respect to an inquiry concerning Communist Party membership, then such person is a member of the Communist Party, lacking in good moral character, contemptuous of the law and engaged in criminal activities. That no such inferences can be drawn in a judicial forum with respect to the invocation of the First and Fifth Amendment privileges is firmly established, as previous discussion has indicated (p. 85, *supra.*)

It is urged by respondents, however, that all that the conspiracy did was justified because it can reasonably be inferred that "the public" draws such invidious inferences. But, actually, if a court of law is free to draw such inferences, it is equally free to draw quite contrary inferences. A court of law could properly infer that the

"public" looks upon the privileges granted by the Constitution as inviolable and deplores any invasion or abridgement of those rights. The public might infer that monopolistic combinations which deprive persons of their right to follow their callings because of lawful claims under the Constitution were themselves immoral, lawless and subversive. Whatever inferences might be drawn by the "public" is, therefore, hardly a justification as a matter of law for the admitted conduct of these respondents under this complaint.

Moreover, as respondents recognized, an argument concerning private "inferences" which might be drawn had no relevance to the issues here unless related to respondents' conduct. Therefore, respondents urged that the persons who drew such inferences would inferentially not attend any motion picture in the industry at all, from which it followed that respondents, to protect their common economic interests and avoid threatened injury, were compelled to combine as they did and do what they did. But it is simply requiring the court to engage in the grossest conjecture and surmise to infer that some persons will not attend a single motion picture in which a performer whom they dislike appears, and then to infer therefore that such persons will attend no motion pictures at all. Respondents advanced this argument in order to justify the coercion practiced upon all employers in the industry, but petitioners have constantly stated that they are prepared to prove that the industry suffered no economic injury and was not threatened with such injury; that indeed persons who had invoked their constitutional privileges before the same legislative committee continue to star in theatrical hits on Broadway; that one of the petitioners here, Michael Wilson, received an award from the Motion Picture Academy of Arts and Sciences after

his invocation of his privileges before the committee, that a number of motion pictures written by other petitioners here have been profitably redistributed with the names of petitioners appearing thereon. Moreover, the claim of "common interests" in an "integrated industry" could be refuted by demonstrating that the respondents in fact do have economic interests which conflict, that they carry on publicity campaigns for their own interests and their own productions, and that what is profitable for one may not be profitable for the other. In short, far from inferring that all of the employers in the industry would be commonly injured because some persons would draw in invidious inferences from a claim of constitutional privileges, the proof would show that this concerted agreement was actually conceived as a means of coercing individual employers to refrain from employing petitioners, so that no profitable competitive advantage could be obtained by independent employers over the combine, or among its members. Clearly, this would not justify the concededly tortious invasion of petitioners' rights as a matter of law, and the denial by the State of all relief therefrom.

Moreover, the argument that because some persons may decline to attend motion pictures when constitutional privileges are invoked, this always justifies a monopolistic combination in its invasion of the right to work and other basic freedoms, is fraught with even greater vice. If certain "pressure groups" do not care for performers of the Catholic faith, or the Protestant or Jewish faith; or if some segment of the population does not like Negroes; or Republicans, or Democrats; or "union men" or "non-union men", does it follow that respondents, whatever they may do as individual employers, can combine to exclude such classes of persons from their chosen callings,

coercing all employers in the industry to do the same and circulating blacklists to make their coercion effective? If respondents' argument, that all that they did was justified as a matter of law, be valid, it would follow that conspiracies to commit any or all of the aforesaid invasions of rights would be within the pale of the law. If all access to the courts were denied under such circumstances, without even a trial on the facts, it would be difficult to speak of rule under a "government of laws, not of men". Conduct, admittedly as wrongful as it is here, can not be justified at all, but if justification could be shown, it at least would have to be pleaded and proved if fundamental claims under the Constitution are not to be denied.

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia State Board of Education v. Barnett*, 319 U. S. 624, 638. The right of the individual to assert his political principles at the times of his choice and to maintain them inviolate against governmental interference is one of these. The winning of a popularity contest cannot be the precondition for its exercise. *Cf. Cantwell v. Connecticut*, 310 U. S. 296, 310. If the motion picture industry may banish all individuals not certified by Madison Avenue as beloved by the public, then so may every other industry. If institutional advertising is any test, then every major industry considers public good will essential to its welfare and any industry can justify such a policy on the same grounds advanced by the motion picture respondents. The result would be a land in which everyone would be free to think, speak, write and associate as he pleased provided he were willing to risk his status in his chosen occupa-

tion, the opportunity to work therein and the resultant economic consequences for himself and his family. (See for the ever increasing growth of monopoly concentration, Report Senate Subcommittee on Antitrust and Monopoly, 85th Cong. 1st Sess. (1957)—Concentration of American Industry.) Indeed, competent observers have noted that to a considerable measure this nation already suffers from this genus of "freedom" and that its toll has been heavy. *Cf.* Nanette Dembitz, "Congressional Investigation of Newspapermen, Authors and Others in the Opinion Field—Its Legality and the First Amendment", 40 Minn. L. R. 517, 519-20.[27]

In opposition to the petition for a writ of certiorari, respondents recast their argument and presented their version of "justification as a matter of law" in a new form. It was urged by respondents *arguendo* that at most the State court by its denial of all relief had merely chosen

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[27] In a footnote at page 520, the author illustrates:

"See, for examples of this observation from diverse sources, letter from former United States diplomatic officials, stating 'Fear is playing an important part in American life.' N. Y. Times, Jan. 17, 1954, Section IV, p. 8E, col. 6; Secretary of State Dulles' reference to the authors of the letter as 'a distinguished group of former diplomats whom I highly respect.' N. Y. Times, Jan. 20, 1954, p. 9, col. 2. See also President Eisenhower's speech at Dartmuth College against 'book-burning,' N. Y. Times, June 15, 1953, p. 1, col. 6. See article entitled, *To Insure the End of Our Hysteria*, by Paul G. Hoffman, Chairman of the Board of Studebaker-Packard Corporation, describing 'The complex of fear that has spread over America . . . ' in respect to freedom of thought and expression, N. Y. Times Magazine, Nov. 14, 1954, p. 9. See also Oakes, *This Is the Real, the Lasting Damage*, N. Y. Times Magazine, March 7, 1954, p. 9. For a sidelight on the issue, see letter from 'High School Teacher' in the strongly anti-Communist *New Leader*, April 20, 1953, p. 28, complaining that the fear of political expression instilled in the students by other teachers makes it impossible for her to continue to tell them that talk of repression is only Communist propaganda."

"a policy: which the Constitution does not prohibit." What was this policy? The policy, variously stated, was "that employers are free to agree with each other upon terms and conditions of employment, one of which may be employees' obedience to appropriate inquiries of government investigators" (Resp. Op. Br. p. 14); a policy of "complete freedom of bargaining in respect of employment and employment opportunities" (Resp. Op. Br. p. 14); a policy in short, of "freedom of contract" (Resp. Op. Br. p. 12). It was urged that this Court not return to the "Lochner-Coppage-Adkins philosophy" (Resp. Op. Br. p. 13).

Of course, the State court below announced no such policy, and respondents concede as much. They urge, however, if their jurisdictional arguments be not accepted, that the ultimate effect of the dismissal of the complaint would be no more than the choice of "competing policies" which a State should be free to make. But respondents' statement of the "policy" appears to disregard the facts alleged in the complaint and to confuse legal issues arising therefrom. The complaint herein does not involve an individual employer's freedom of contract, nor problems of labor—management bargaining relations. Nor does it involve "freedom to agree" upon terms and conditions of employment. The so-called "policy" which respondents ascribe to the State, *and the only one alleged in the complaint*, is this: That employers controlling all employment opportunities in the motion picture industry may in concerted agreement coerce every employer in the industry, and themselves, and use blacklists to make that coercion effective, for the purpose and with the intent of depriving persons who are pursuing their callings in the industry from ever working at their chosen professions or exer-

cising their rights of opinion, belief or association unless such persons forego their lawful constitutional privileges before the House Committee on Un-American Activities, all with the ultimate objective of limiting the political beliefs and activities of such persons and the employees in the industry, to the end that the beliefs, opinions and associations of employees in the motion picture industry and the content of motion pictures shall be satisfactory to the House Committee on Un-American Activities.

It is this policy which is involved herein, at this stage of the proceedings, and as we have endeavored to show in this brief such "policy" is forbidden by the Constitution and the laws of the United States and has no reasonable relation to any interest which the State is entitled to protect. *Cf., Wieman v. Updegraff,* 344 U. S. 183; *American Federation of Labor v. Swing,* 312 U. S. 321; *Marsh v. Alabama,* 326 U. S. 501; *West Va. State Bd. of Education v. Burnette,* 319 U. S. 624. A policy of a State, whether established by the judiciary or the legislature which denies the right of citizens to live except at the will of a monopolistic combination because citizens have exercised First Amendment and Fifth Amendment privileges in a federal tribunal is not the expression of a lawful "social or economic experiment"; it is a policy completely at variance with the protective guarantees of the supreme law of the land. *Cf. Am. Fed. of Labor v. Swing,* 312 U. S. 321, 326.

VI.

The Dismissal of the Complaint as to the Members of the House Committee and Its Investigator Was Similarly Contrary to the Supremacy Clause of the Constitution and Deprived Petitioners of Their Liberty and Property Without Due Process of Law and Denied Petitioners the Equal Protection of the Laws in Violation of the Pertinent Provisions of the Fourteenth Amendment.

The complaint was dismissed as to the remaining three respondents upon the same ground as it was dismissed against all the other respondents [R. 61]. All that has been heretofore discussed in this brief on that legal issue will, therefore, be equally applicable here and we do not repeat the discussion.

It should be noted, however, what these three respondents by their demurrer admit. They entered into the concerted agreement with the other respondents as alleged in the complaint [R. 35]. They "undertook to and did induce and persuade other employers in the motion picture industry to desist and refrain from employing and to refuse employment to all such employees and other persons" [R. 36]. They circulated the list of names "with the direction and intent" that the petitioners be not employed [R. 36]. The purpose and intent of their conduct was as alleged in the complaint [R. 37]. At all times mentioned in the complaint these three respondents conspired and furthered the conspiracy both in their official capacity and individually in non-official capacities [R. 35].

While the question of the exemption *vel non* of public officers from liability did not arise in the posture of the proceedings below, and was not the ground of the dismissal of the complaint, it should be noted that the

facts set forth in the complaint showed conduct far removed from official duty. It is certainly not within the scope of the jurisdiction of members of a legislative committee, or employees of such a committee, to conspire with private persons to deprive citizens of their right to work and to further the conspiracy by circulating blacklists and otherwise coercing employers in the industry. The complaint, fairly construed, showed a tortious invasion by these three respondents of petitioners' rights, the respondents committing these wrongs both in their official capacities and as individuals. The following language is applicable here: "It was insisted during the argument on behalf of the petitioner that Congress cannot punish a State judge for his official acts; and it was assumed that Judge Cole, in selecting the jury as he did, was performing a judicial act. This assumption cannot be admitted. Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent." *Ex parte Virginia*, 100 U. S. 339, 348. See also, *United States v. Bramblett*, 348 U. S. 503; *Lewis v. Brantigam*, 227 F. 2d 124, 127-129; *Picking v. Pa. R.R. Co., et al.*, 151 F. 2d 240 (C. A. 3, 1945).

Conclusion.

The judgments of the court below should be reversed.

Respectfully submitted,

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APPENDIX A.

Consitutional Provisions and Statutes Involved.

The pertinent portions of provisions of the Constitution read as follows:

Amendment XIV, Section 1: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment I: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment V: "No person . . . shall be compelled in any criminal case to be a witness against himself, . . ."

Article VI: ". . . This Constitution and the Laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The pertinent portions of provisions of United States Statutes read as follows:

18 U. S. C. 241, June 25, 1948, c. 645, 62 Stat. 696.

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by

the Constitution or laws of the United States, or because of his having so exercised the same; . . . .

"They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

18 U. S. C. 242, June 25, 1948, c. 645, 62 Stat. 696.

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

50 U. S. C. 783(f), Sept. 23, 1950, c. 1024, Title I, Section 4(f), 64 Stat. 991.

"Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. . . ."

2 U. S. C. 192, as amended June 22, 1938, c. 594, 52 Stat. 942, reads:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any Committee of either House of Congress, willfully makes default or who, having appeared, refuses to answer any question pertinent to the

question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

The pertinent provisions of California Statutes read as follows:

California Labor Code, Section 1101.

"No employer shall make, adopt, or enforce any rule, regulation, or policy:

"(a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office.

"(b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees."

California Labor Code, Section 1102.

"No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity."

APPENDIX B.

1. The Committee's Hollywood Hearings—Its First Investigation of the Motion Picture Industry October 20-30, 1947.

A. The Committee's Statement of Purpose.

Chairman Thomas. This Committee, under its mandate from the House of Representatives, has the responsibility of exposing and spot-lighting subversive elements wherever they may exist. [P. 2, Oct. 20, 1947.]*

* * *

The Chairman. These 79 persons that I named before are not just the run-of-the-mill; they are very prominent persons, prominent in the industry, and those are the people that we have the records on; those are the people whose records are going to be brought out before this hearing is over. Do you not think they should be?

Mr. (James Kevin) McGuinness. I think that the greatest fight that can be made against communism is to identify the Communists and to force them to take the responsibility that every other American takes, to appear publicly, state, advocate, and support his own beliefs, and be judged by the American people as to whether those beliefs are worth while, or not. [P. 140, Oct. 22, 1947.]

* * *

Mr. Stripling (Committee Investigator). Don't you think this committee has an obligation to expose them if they are there?

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*All references in Appendix B1 are to the Hearings of the House Committee on Un-American Activities (80th Cong.) into Communist infiltration in the motion picture industry—October 20 to October 30, 1947.

Mr. (Eric) Johnston. I have always said that you did, but I have always thought you should do it under the American program of a free and fair trial. I have never objected to your investigating Hollywood. I told you we welcomed it, and we sincerely do. We haven't always welcomed some of the methods you have adopted. [P. 323, Oct. 27, 1947.]

* * *

The Chairman. Mr. Johnston, you have by inference been very critical of the methods of this committee. That is your prerogative. Many other persons have been very critical of our methods. Many have approved them. But this committee is created by law, Public Law No. 601. One of the duties of the committee is to expose. I am going back over the years but this year we have exposed communism in the labor field, communism in the Government. We have spot-lighted persons like Gerhart Eisler, Hanns Eisler—who, incidentally, was employed in the moving-picture industry, and employed at a very large salary—Eugene Dennis, many others over the period of years is the result of exposures in the spotlighting. We have been instrumental in aiding persons like Earl Browder to go to jail, Fritz Kuhn to go to jail, Pelley to go to jail, doing away with the German-American Bund. So I don't see that the moving-picture industry, any more than we will say some other field, has any sanctum sanctorium before it. We are going to continue to expose and if you will just sit around here every day this week, you will see more expose and more spotlighting of Communists than you have ever seen before. What you heard this morning, what you saw this morning, was just typical of what you are going to hear and see all the rest of the week and maybe some of next week—and it makes no difference whether you have got glamour

girls out there or whether you have got a lot of funds behind you or not, if there are Communists in that industry we are going to expose them. [P. 328, Oct. 27, 1947.]

* * *

The Chairman. The Chair would like to make this statement.

The hearings today conclude the first phase of the committee's investigation of communism in the motion-picture industry. While we have heard 39 witnesses, there are many more to be heard. The Chair stated earlier in the hearing he would present the records of 79 prominent people associated with the motion-picture industry who were members of the Communist Party or who had records of Communist affiliations. We have had before us 11 of these individuals. There are 68 to go. This hearing has concerned itself principally with spotlighting Communist personnel in the industry. [P. 522, Oct. 30, 1947.]

* * *

B. Blacklisting as the Objective of the Committee.

Rep. Thomas. We can't understand if you have talked to the other producers why they don't do something.

Mr. (Jack) Warner. I talked to them individually.

Rep. Thomas. All right, individually. They probably consciously or unconsciously agree with you, but just give you a blank stare, as you say. But we want to know what you can do about it. How will you correct the situation.

Mr. Warner. As I said, I have gone out whole hog to try to get these people to do something about it. I can't understand why people engage them.

Rep. Thomas. That is what we would like to know.

Mr. Warner. I can't fathom it, to save my life.

Mr. Thomas. But we want to know how you are going to correct the situation. Do you think they will keep on engaging them and keep on doing this until the first thing you know the industry gets a black eye, or will they ultimately get religion as you have got religion?" [P. 49, Oct. 20, 1947.]

* * *

Mr. Stripling. Don't you think the most effective way of removing these Communist influences—and I say Communist influences: I am not saying Communists—I am not accusing them all of being Communists—but don't you think the most effective way is the pay-roll route? In other words, if the owners and producers cut these people off the pay roll it would eliminate it much quicker than a congressional committee or crusades and so forth. [Pp. 49, 50, Oct. 20, 1947.]

* * *

Mr Thomas: The committee appreciates your coming here, Mr. Warner. You are doing a splendid job. We only wish that it could be carried through into some of the other companies. If at any time you have any ideas as to how you can work out the situation with the other producers in order to accomplish just what you have been doing I think it would be helpful to the country. [P. 52, Oct. 20, 1947.]

* * *

Rep. Vail. Now, we have touched upon the writers that were dismissed. But we all have knowledge of a large number of actors who are generally known to have communistic sympathies and are contributors to the Communist war chest. It would seem to me that your organization would recognize the fact that the American people are not interested in viewing the pictures in which actors appear who have communistic leanings. It would seem to me that this organization should concern itself with cleaning house in its own industry.

You pointed out what the organization was not organized for, but you didn't touch upon the reason, the actual reason or reasons for its existence. I take it for granted that the reason is the betterment and the improvement of the industry. I don't think that you can improve the industry to any greater degree and in any better direction than through the elimination of the writers and the actors to whom definite communistic leanings can be traced. [P. 53, Oct. 20, 1947.]

* * *

Rep. Vail. I know he is sincere. I think you are, too, but, of course, we have the problem of eliminating the communist element from not only the Hollywood scene but also other scenes in America, and we have to have the full support and cooperation of the executives from each of those divisions." [P. 66, Oct. 20, 1947.]

* * *

Rep. Vail. If you have succeeded so admirably in cleaning out the Communist element, and their fellow travelers from your studio, won't you agree then it is possible for all of the other producers to do likewise?

Mr. (Sam) Wood. Well, you must consider that I am just one outfit. I have one writer; I may have two writers working, and that is the limit. They have probably 40 or 50 of them working and when they get around to it I think you will get action from those gentlemen, too. [P. 66, Oct. 20, 1947.]

* * *

Mr. Sam Wood. Some of them, I think, want to be intellectuals. I think they have different reasons, but we cannot quite figure out how they can dominate these people, Americans, and make them do things they do. There are some of them back there now.

The Chairman. We will take care of them when their turn comes.

Mr. Wood. I will help you, sir.

Mr. Wood (Congressman). If they were all eliminated from the picture, would it, in your opinion, weaken the effectiveness of the picture industry or the purpose for which it is organized?

Mr. Wood. Definitely not. [P. 67, Oct. 20, 1947.]

* * *

Mr. Stripling. Who would the responsibility rest with for cleaning the Communists out of the motion picture industry?

Mr. Rupert Hughes. Well, I think the producers in general should do it because they are the people who hire and fire. I think they have been unjustifiably lax. They have paid from $2,000 to $5,000 a week to men whom they know to be brilliant. Many Communists are very, very brilliant. They permit them to as little poison in." [P. 131, Oct. 21, 1947.]

* * *

The Chairman. . . . It is very evident from the material presented by our investigative staff and the research staff that these four men have extensive Communist and Communist front records. Yet, this kind of people are writing scripts in the moving picture industry.

There will be more witnesses to come who will probably all carry out the same line. The Chair would like to point out that is one of the reasons why this Committee is investigating communism in the moving-picture industry, and it is just definite proof that there is a real reason for the investigation before these hearings.

. . . So this committee is going to continue this probe—is going to continue the hearings; we are going to do everything we possibly can to spotlight these people just like we spotlighted Fritz Kuhn or Pelley or Gerhart Eisler or Hanns Eisler, Josephson, Eugene Dennis, and anyone else whom we find has a Communist record. It will be beneficial to the American people and it will be beneficial to the industry itself, because you are the people—you persons high up in the industry can do more to clean your own house than can anybody else, but you must have the will, and we hope that by spotlighting these Communists you will acquire that will. [P. 398, Oct. 28, 1947.]

* * *

Mr. Stripling. Are you now producing, is your company producing a picture based upon the book entitled, "Rachael" written by Howard Fast?

Mr. Dore Schary. Yes, that is a short story called "Rachael".

Mr. Stripling. Written by Howard Fast?

Mr. Schary. Yes. It was purchased—I think the studio has owned it since 1936.

Mr. Stripling. Are you familiar with the Communist record of Howard Fast?

Mr. Schary. I am familiar with it, yes.

Mr. Stripling. He is a publicly avowed Communist?

Mr. Schary. Yes; that is right.

Mr. Stripling. You have no objection, then, to producing the works of Communists?

Mr. Schary. The point I want to make, Mr. Stripling, is that I did not purchase the story Rachael. That was purchased before I got there. When I got there and reviewed the material there was a script already written, a script of Rachael, and I found it, I must say, a very charming story, not political whatsoever. It is a picture of American pioneer life in the early 1800's and, as a matter of fact, the film has been completed. There is nothing whatever political in it. [P. 476, Oct. 29, 1947.]

* * *

Rep. Vail. Now, in your own case, you have admitted that Hanns Eisler was employed in your studio for some little time; you associated with him, and yet it took this committee to alert you insofar as the real nature of his activities were concerned; isn't that true?

Mr. (Dore) Schary. Yes, As I said, I did not know Hanns Eisler was a Communist until—or reputedly a Communist, I should, until this record was shown to me—until, rather, I heard it before. The point I make, however, was that he was not employed by me at the time. The question of employment then came up later on with Mr. Stripling. As far as the other points you make, Mr. Congressman, certainly I believe that America

and the American people should be alerted and very vigilantly (*sic*) about their prerogatives.

My point is that they are. I believe they are very alert and very vigilant and this is why communism, I believe, has not gotten any kind of a hold politically in the United States whatever. I don't think it has anything to offer the American people. [P. 477, Oct. 29, 1947.]

* * *

The Chairman. . . . I want to emphasize that the committee is not adjourning sine die, but will resume hearings as soon as possible. The committee hearings for the past two weeks have clearly shown the need for this investigation. Ten prominent figures in Hollywood whom the committee had evidence were members of the Communist Party were brought before us and refused to deny that they were Communists. It is not neeessary for the Chair to emphasize the harm which the motion-picture industry suffers from the presence within its ranks of known Communists who do not have the best interests of the United States at heart. The industry should set about immediately to clean its own house and not wait for public opinion to force it to do so. [P. 522, Oct. 30, 1947.]

* * *

C. Opposition of Motion Picture Industry to Proposed Blacklist.

Mr. Stripling. . . . Now, as an executive of RKO Keiths, what is the policy of your company with regard to the employment of people who are notoriously international Communists?

Mr. (Dore) Schary. That policy, I imagine, will have to be determined by the president, by the board, and by myself. I can tell you personally what I feel. Up until

the time it is proved that a Communist is a man dedicated to the overthrow of the Government by force or violence, or by any illegal methods, I cannot make any determination of his employment on any other basis except whether he is qualified best to do the job I want him to do. [P. 470, Oct. 29, 1947.]

* * *

The Chairman. In view of the testimony that was presented to the Un-American Activities Committee, concerning Hanns Eisler and knowing him now as a Communist, and knowing also the record of both Gerhart Eisler and Hanns Eisler, would you as a studio executive be willing to hire him now?

Mr. Schary. As I told Mr. Stripling, if there is evidence to support the charge that he is dedicated to the overthrow of the Government by force I would not hire him. I would hire no such man because I believe he would not be dedicated to the best interests of America.

The Chairman. Just let's forget that for a second, and think of Hanns Eisler.

Mr. Schary. Yes, sir.

The Chairman. You have read a lot about Hanns Eisler lately?

Mr. Schary. Yes, sir.

The Chairman. Would you be willing to rehire Hanns Eisler?

Mr. Schary. I think, Mr. Thomas—and I really don't want to be evasive, and I don't want you to assume that I am—I can only judge in terms of the record. Now, I have been asked by Mr. Stripling that if, on the record, I was shown that this man had been definitely proven that he was dedicated to the overthrow—that the Communist

Party was dedicated to the overthrow of the Government—of course I would not hire him. But I cannot judge that until it is a part of the proven record. I think I must do that as a citizen.

The Chairman. All right. Well, supposing it is not called to your attention that the Communist Party is dedicated to the overthrow of the Government by force or violence, but knowing the record of Hanns Eisler—just think in terms of Hanns Eisler—having read what you have about Hanns Eisler, are you willing to rehire Hanns Eisler?

Mr. Schary. Well, you get into a completely different area. You are confusing me between a matter of a principle and a matter of whether I would, as an executive in charge of motion pictures, hire Hanns Eisler.

The Chairman. I am talking about you now as an executive.

Mr. Schary. As an executive, I can only repeat and maintain that position, Mr. Chairman, which I think is a very rational position as a citizen. I will hire only those people I believe best qualified for their jobs until it is proven, until it is a matter of record, and if that record is shown to me of course I would not hire anyone who is dedicated to the overthrow of the Government by force.

The Chairman. All right, but supposing we can prove that Hanns Eisler was a Communist and was very active as an international Communist—

Mr. Schary. Yes.

The Chairman. But there has never been any proof, we will say, that he advocated, personally advocated, the overthrow of the Government by force or violence.

Mr. Schary. Yes.

The Chairman. Knowing the record as you do—in all newspapers now—would you rehire Hanns Eisler?

Mr. Schary. I have to answer that in two parts, and I again don't want to seem evasive.

One part is that I don't know whether I would hire Mr. Hanns Eisler because of his particular qualifications as a musician. The second, there has been a ruling, I believe, in the Supreme Court which prohibits me as an American to arbitrarily refuse employment to a man purely because of his politics. I believe that was adjudicated by the Supreme Court and I cannot, as an American, refuse that.

What I might feel personally about that would be another thing.

The Chairman. Therefore, assuming that Hanns Eisler is a great artist; assuming also that he is a Communist, you would not hesitate to rehire him?

Mr. Schary. I would not hesitate to rehire him if it was not proven that he was a foreign agent. I would still maintain his right to think politically as he chooses.

The Chairman. Have you ever heard of Rip Van Winkle?

Mr. Schary. Yes, sir; many years ago.

The Chairman. Well, I want to tell you something. If some people in the United States don't wake up and get out of the long sleep we will find some of the difficulties here that they have encountered in France and Italy and Yugoslavia and Poland and Finland, and some of these South American countries. It is the Rip Van Winkle opinion that has been permitting communism to grow throughout the world the way it has. [Pp. 471-2, Oct. 29, 1947.]

* * *

Mr. Stripling. You heard them refuse to answer the question whether or not they are members of the Communist Party, did you not?

Mr. Schary. Yes, sir.

Mr. Stripling. Will you continue to employ them?

Mr. Schary. They are under contracts to RKO. They were employed by RKO before I came there. My association with both Mr. Scott and Mr. Dymtryk has been very professional. As an executive I have consulted with them on films. I can only say this, Mr. Stripling, I do not know what these men in their minds are pledged to.

It would come to me as a very terrible shock if I found out that these charges being made here in terms of their being foreign agents are true. That would come to me genuinely as a very surprised shock, but I must say, not in defense but in honesty, that at no time in discussions have I ever heard—or films—these men make any remarks or attempt to get anything subversive into the films I have worked on with them. I must say that in honesty.

Mr. Stripling. Well, Mr. Schary, you saw them here this afternoon given every opportunity to answer the questions—

Mr. Schary. Yes, sir.

Mr. Stripling. Whether or not they were ever a member of the Communist Party.

Mr. Schary. That is right, sir.

Mr. Stripling. You have heard the investigator for this committee read the name, date, number, and place of their Communist membership.

Mr. Schary. That is right, sir. [P. 473, Oct. 29, 1947.]

* * *

Mr. Smith (Committee Investigator). If a studio releases a person who is suspected of communistic activities would he be blackballed in other studios?

Mr. James K. McGuinness. No.

Mr. Smith. What would happen, in your opinion?

Mr. McGuinness. Hitherto he has usually been promptly hired and sometimes, or perhaps frequently, at an increased salary.

Mr. Smith. Do you think that is a bad situation in the industry?

Mr. McGuinness. I would like to answer that a little at length.

I believe there is no legal obligation on anybody to hire anybody, nor is there any legal compulsion on anybody to fire anybody. I would regret that any man was deprived of his livelihood for his political opinions no matter how abhorrent those opinions are to me.

I think, however, there is an obligation on the Congress of the United States as great or greater than on the citizens, who have sworn to defend this country against all its enemies, foreign or domestic, to recognize that we have in our midst an active fifth column, a group of Quislings who intend to destroy our form of government in the service of a foreign ideology.

Mr. Smith. How many writers would you think the industry would lose; that is, top-flight writers, if all the Communist writers were released?

Mr. McGuinness. Among the important writers, that is, the actually top-flight writers, somewhere between 10 and 15.

Mr. Smith. How many pictures a year do you think the studios would lose?

Mr. McGuinness. Well, if those 10 or 15 writers were more productive than usual, the same number of pictures.

Mr. Smith. In other words, do you think it would materially hurt the studio operation?

Mr. McGuinness. Not in my opinion.

Mr. Smith. Do you know of any reasons why the studios tended not to release these individuals?

Mr. McGuinness. Yes. To tell you that I must try, as briefly as possible, to sketch the studio situation.

Each studio has as paid employees a staff of producers who have the ultimate responsibility for the production of individual pictures. It is a highly competitive business and each of these men, since he is held responsible for the ultimate success or failure of the pictures, has great latitude in the selection of the writer who will prepare the script, and frequently the director who will direct the picture.

He usually has a very great say in the casting of the picture. That trust must be imposed on him by the head of the studio who cannot personally produce each picture.

These men charged with production are primarily showmen and not men deeply informed on the dialectics of communism. They are more concerned with getting the best possible script than with anything else.

If some writer who has had a number of successes is available at the time they start a script, they will exercise every effort to get him because a good script is the primary insurance of a successful picture.

I doubt that any of the heads of studios participate in the selection of the writers assigned to each script. I think it is humanly impossible with their other duties for

the men running the studios to go that deeply into the detail of production. [Pp. 141-2, Oct. 22, 1947.]

* * *

Rep. Vail: Wouldn't such an association provide a splendid piece of machinery for distribution of information between producers as to the type of individuals that are employed by the industry and who are concerned with subversive activities?

Mr. (Jack) Warner: Of course, that has never been brought up in the Association in any manner, shape or form, by word or written form, to my knowledge. I am rather active in the Association. Of course, I don't believe it would be legal in my opinion—speaking only personally—to have the Association or any men band together to obstruct the employment of any other man.

I don't believe the Association would have anything whatsoever to do with that type of operation. I would not be a party to it and neither would any of the other men, from my knowledge of them.

Rep. Vail. Since we recognize the fact that motion pictures represent a forcible vehicle for the distribution of subversive information it would seem to me that would be a very important bit of business for your Association. [P. 18, Oct. 20, 1947.]

* * *

Rep. Wood. Mr. Warner, I can of course appreciate the extreme difficulties confronting producers of pictures in undertaking to screen every employee engaged in the various activities of the picture industry, but what I am concerned with is to ascertain whether or not there is now any producer in America or responsible studio head who knowingly maintains under this employment

any person who undertakes to inject into pictures un-American doctrines or ideologies which seek to weaken or destroy the form of government under which this nation has grown to its place amongst the nations of the earth. Do you know of any such producer, and if so, I would like to have the name.

Mr. Warner: I personally do not know anyone employing anyone who is willfully or otherwise endeavoring to do anything to the system of American government. As I said earlier, it is—what I have read—certain writers have a membership in Communistic parties. Some of them haven't denied it after being accused by the press, so I don't know whether they stand convicted, or not. I am not the one to judge whether they are Communists or not. [P. 31, Oct. 20, 1947.]

* * *

Mr. Stripling. When you employed Mr. Cheyfitz were you aware that there was sworn testimony before a committee of Congress that he was a member of the Communist Party? That his mother was a member of the Communist Party? That they had both been members of the Communist Party for some time?

Mr. (Eric) Johnston. He told me he was a member of the Communist Party. I assumed that was sufficient.

Mr. Stripling. That made no difference to you?

Mr. Johnston. After getting the recommendations I did about him and for him, I felt he was a man that could be well employed. [P. 317, Oct. 27, 1947.]

* * *

D. Censorship as an Objective of the Committee and the Industry's Opposition Thereto.

Mr. Smith (Committee Investigator). Are you making any anti-Communist pictures at Metro-Goldwyn-Mayer at the present time?

Mr. (Louis B.) Mayer. I think the one we are going to start shooting promptly—(laughter)—we have been preparing it for some six months.

The Chairman. Mr. Mayer, these hearings haven't anything to do with the promptness, have they?

Mr. Mayer. No, no, it is just out now, called "Vespers in Vienna." [P. 76, Oct. 20, 1947.]

* * *

Mr. Smith. You mentioned a few pictures a while ago that you thought were pro-Soviet pictures. During the time those pictures were made were there any anti-Communist pictures made by any of the studios, to your knowledge?

Mr. (James K.) McGuinness. Not during the war period. Mr. Mayer mentioned two made at my studio, Ninotchka and Comrade X, prior to the outbreak of the war.

Mr. Smith. Do you think some anti-Communist pictures should be made?

Mr. McGuinness. I certainly do.

Mr. Smith. Do you mean shorts or full-length pictures, or both?

Mr. McGuinness. Both.

The Chairman. Right along that point, Mr. McGuinness, why is it they are not being made?

Mr. McGuinness. It takes a long while from the inception of the idea of producing a picture until it actually

gets before the screen. Sometimes it takes a year's work on the script, sometimes 2 years' work. You have to find a story. You must remember it is not so long since Russia was our ally. Nobody at that time wanted to make an anti-Communist picture.

It took some time for the hope that we would eventually reach an understanding with Russia to fade. I think now some studios have already found strong anti-Communist material, and others are searching for it.

I think that when the first picture is made public reaction to it will determine how many more will or will not follow.

The Chairman. Well, has the industry the will to make anti-Communist pictures.

Mr. McGuinness. I think the industry is acquiring it.

* * *

The Chairman. Mr. McGuinness, will these public hearings aid the industry in giving it the will to make these pictures?

Mr. McGuinness. It is my opinion that they will. [Pp. 144-145, Oct. 22, 1947.]

* * *

Rep. Thomas. Now, it is 1947. Do you believe it [Mission to Moscow] is pro-Communist?

Mr. Stripling: Would you release the film now, in other words?

Mr. (Jack) Warner: No, we would not release the film now.

Rep. Thomas: Why not release the film now?

Mr. Warner: Because of the way Russia is handling international affairs since the cessation of the war. I

consider in my opinion as an American that they are advocating Communism throughout the world and I am not in any shape, manner or form in favor of anything like that. In fact, I despise and detest the very word. [Pp 33-34, Oct. 20, 1947.]

* * *

Mr. Warner. We made the film to aid in the war effort, which I believe I have already stated.

Mr. Stripling. Whether it was true or not?

Mr. Warner. As far as I was concerned, I considered it true to the extent as written in Mr. Davies' book.

Mr. Stripling. Well, do you suppose that your picture influenced the people who saw it in this country, the millions of people who saw it in this country?

Mr. Warner. In my opinion, I can't see how it would influence anyone. We were in war and when you are in a fight you don't ask who the fellow is who is helping you.

Mr. Stripling. Well, due to the present conditions in the international situation, don't you think it was rather dangerous to write about such a disillusionment as was sought in that picture? [P. 39, Oct. 20, 1947.]

* * *

Mr. (Adolphe) Menjou. . . . If you want to ask me if I know of any un-American propaganda in any pictures that I appeared, I will be glad to give you my thoughts.

Mr. Stripling: Will you give an example?

Mr. Menjou: I don't think the picture "Mission to Moscow" should have been made." [P. 93, Oct. 21, 1947.]

* * *

Mr. Smith. Do you recall scenes in there at the night club where everybody was drinking ("Song of Russia")?

Mr. Mayer. They do in Moscow.

Mr. Smith. Do you feel that that represents Russia as it is today?

Mr. Mayer. I didn't make it as it is today, I made it when they were our ally in 1943.

Mr. Smith. Do you feel it represents Russia in 1943 as conditions were in Russia?

Mr. Mayer. That is what I understood, that they go to night clubs there in Moscow. If only the rest of the Russians had a chance to do the same thing, it would be fine, but they don't. This picture was laid in Moscow. [P. 76, Oct. 20, 1947.]

* * *

Mr. Stripling. Now, Mr. Mayer, you stated that you recently viewed the picture.

Mr. Mayer. Yes, sir.

Mr. Stripling. Is it your opinion that there were no political implications in it whatsoever?

Mr. Mayer. I am convinced of that. I am under oath, and if I met my God I would still repeat the same thing. [P. 81, Oct. 20, 1947.]

* * *

Miss Ayn Rand. Nobody has stated just what they mean by propaganda. Now, I use the term to mean that Communist propaganda is anything which gives a good impression of Communism as a way of life. Anything that sells people the idea that life in Russia is good and that people are free and happy would be Communist

propaganda. * * * He starts playing the American National Anthem and the National Anthem dissolves into a Russian mob, with the sickle and hammer on a red flag very prominent above their heads. * * * and I am only a naturalized American. That was a terrible touch of propaganda. [P. 83, Oct. 20, 1947.]

* * *

. . . Then you see a Moscow restaurant that just never existed there. In my time, when I was in Russia, there was only one such restaurant, which was nowhere as luxurious as that and no one could enter it except commissars and profiteers. Certainly a girl from a village, who in the first place would never have been allowed to come voluntarily, without permission, to Moscow, could not afford to enter it, even if she worked 10 years. However, there is a Russian restaurant with a menu such as never existed in Russia at all and which I doubt even existed before the revolution. From this restaurant they go on to this tour of Moscow. The streets are clean and prosperous-looking. There are no food lines anywhere. You see shots of the marble subway—the famous Russian subway out of which they make such propaganda capital. There is a marble statute of Stalin thrown in. There is a park where you see happy little children in white blouses running around. I don't know whose children they are, but they are really happy kiddies. They are not homeless children in rags, such as I have seen in Russia. [p. 84.]

* * *

. . . Such an idea that every farmer, a poor peasant, has a radio, is certainly preposterous. You may see that they have long-distance telephones. Later in the picture Taylor has to call his wife in the village by long-distance

telephone. Where they got this long-distance phone, I don't know. [P. 86.]

* * *

. . . Suddenly there is a Nazi attack on them. The poor, sweet Russians are unprepared. [P. 86.]

* * *

Now, then, the heroine decides that she wants to stay in Russia. Taylor would like to take her out of the country, but she says no, her place is here, she has to fight the war. Here is the line, as nearly exact as I could mark it while watching the picture: "I have a great responsibility to my family, to my village, and to the way I have lived." What way had she lived? This is just a polite way of saying the Communist way of life. She goes on to say that she wants to stay in the country because otherwise, "How can I help to build a better and better life for my country." What do you mean when you say better and better? That means she has already helped to build a good way. That is the Soviet Communist way. But now she wants to make it even better. All right. [Pp. 86-87.]

* * *

Now, then, Taylor's manager, who is played I believe by Benchley, an American, tells her that she should leave the country, but when she refuses and wants to stay, here is the line he uses: He tells her in an admiring friendly way that "You are a fool, but a lot of fools like you died on the village green at Lexington."

Now, I submit that that is blasphemy, because the men at Lexington were not fighting just a foreign invader. They were fighting for freedom and what I mean—and I intend to be exact—is they were fighting for political

freedom and individual freedom. They were fighting for the rights of man. To compare them to somebody, anybody fighting for a slave state, I think is dreadful. [P. 87.]

* * *

Rep. Wood. It portrayed the people of Russia in a better economic and social position than they occupied?

Miss Rand: That is right. [P. 88.]

Rep. McDowell: You paint a very dismal picture of Russia. You made a great point about the number of children who were unhappy. Doesn't anybody smile in Russia any more?

Miss Rand: Well, if you ask me literally, pretty much no.

Rep. McDowell: They don't smile?

Miss Rand: Not quite that way, no. If they do, it is privately and accidentally. Certainly, it is not social. They don't smile in approval of their system.

Rep. McDowell: Well, all they do is talk about food.

Miss Rand. That is right.

Rep. McDowell: That is a great change from the Russians I have always known, and I have known a lot of them. Don't they do things at all like Americans? Don't they walk across town to visit their mother-in-law or somebody?

Miss Rand. Look, it is very hard to explain. It is almost impossible to convey to a free people what it is like to live in a totalitarian dictatorship. I can tell you a lot of details. [P. 90, Oct. 20, 1947.]

* * *

Mr. Smith. Mr. McGuinness, in your opinion were any pictures made during the period June 1941 through 1945 which you would consider pro-Communist pictures?

Mr. McGuinness. During the period of the war, when I would prefer to call them pro-Soviets more so than pro-Communist, there were three pictures made which have been discussed before this Committee: Mission to Moscow, which, in my opinion, distorted history; North Star, and Song of Russia, which represented Russia as a never-never land, flowing with milk and honey. I never regarded them too seriously since they were made during the war. In fact, I looked on them as a form of intellectual lend-lease. [P. 138, Oct. 22, 1947.]

* * *

Rep. Vail. At this stage we have no law. There is a question as to whether we shall have a law to legalize (sic) Communism. But we have to recognize that the motion picture industry is one of the channels through which is established the groundwork for the eventual destruction by force, that you spoke of a little while ago.

Don't you think it is a job of the industry, then, to prevent the insertion of the tentacles of the communistic ideology through your industry?

Mr. Warner. Speaking as an individual American, with each man in the industry having a responsibility, I feel like you do. I feel, likewise, in the free press, the radio, and the theatre to a degree more or less, that everybody is very, very cognizant of the duty that they are entrusted with, in the dissemination of the American way of life. [P. 53, Oct. 20, 1947.]

* * *

Mr. (Sam) Woods. Well, unquestionably they are always trying. It is very difficult for the American people to understand what you mean by Communist propaganda in pictures. You might refer to some picture,

something is mentioned, and they say, "That is ridiculous, there is no propaganda there," because they are looking for some howl for Stalin or showing the Russian way of life. But they don't show that. They have nothing to sell. All they want to do is to try to unsell America.

Mr. Stripling. That can be done just as effectively by leaving stuff out of pictures as by putting it in?

Mr. Woods: Yes. They don't want to show the American way of life. [P. 60, Oct. 20, 1947.]

* * *

Mr. Smith. Did you read the first script, Mr. Mayer?

Mr. (Louis B.) Mayer. Yes, sir.

Mr. Smith. What was your opinion at that time?

Mr. Mayer. They had farm collectivism in it and I threw it out and said, "This will not be made until they give me the story they told me originally when I approved the making of it."

Mr. Smith. In other words, the first script, in your opinion, was not producable?

Mr. Meyer. Not the first.

Mr. Smith. Why not?

Mr. Mayer. Because I will not preach any ideology except Americanism, and I don't even treat that, I let that take its own course and speak for itself.

Mr. Smith. That showed an ideology or condition, so far as Russia is concerned, that you did not approve of?

Mr. Mayer. I wouldn't have it.

Mr. Smith. As to the last script, then, was the script, in your opinion, satisfactorily cleaned up?

Mr. Mayer. I think so; yes, sir.

Mr. Smith. Who was responsible, if you know, for taking the collectivism, and other things, out of the script?

Mr. Mayer. I ordered it out, and the producer said it would all be rewritten, and it was. That is why Taylor was delayed getting into the service. [P. 75, Oct. 20, 1947.]

[Compare this testimony with the testimony of Ayn Rand concerning the same picture (*Song of Russia*):]

(Miss Rand). Then the peasant proceeds to show Taylor how they live. He shows him his wonderful tractor. It is parked somewhere in his private garage. He shows him the grain in his bin and Taylor says, "That is wonderful grain." Now, it is never said that the peasant does not own this tractor or this grain because it is a collective farm. He couldn't have it. It is not his. But the impression he gives to Americans, who wouldn't know any differently, is that certainly it is this peasant's private property, and that is how he lives: He has his own tractor and his own grain. Then it shows miles and miles of plowed fields... [P. 85, Oct. 20, 1947.]

* * *

The Chairman. Mrs. Rogers, what can we do to wake up the industry to produce more really American pictures?

Mrs. (Lela) Rogers. I think you are doing it.

The Chairman. You think we are doing it?

Mrs. Rogers. Yes, sir. [P. 237, Oct. 24, 1947.]

* * *

Mr. Stripling. Well, I was wondering, Mr. Johnston, since you have covered all of this by a code whether or not there is any branch of your association which has

as its purpose the detection of propaganda which might be detrimental to our system of government.

Do you have anyone, for example, who checks pictures to determine whether or not they are propaganda for a foreign government, or do they check only from a moral standpoint. How far does your code extend?

Mr. (Eric) Johnston. The chapters cover particular applications: "Crimes against the law; sex"—you have heard of that, I presume; "vulgarity; obscenity; profanity; costume; dances, religion; locations national feelings titles; and repellant subjects."

Now, there is nothing in here about propaganda. We feel that it is the duty of each motion picture producer to determine what goes on the screen, just like it is the duty of each newspaper publisher to determine what goes into a newspaper.

Mr. Stripling. You draw a line, however, there with your code, don't you?

Mr. Johnston. We draw a line only on those lines which offend a sense of morals or decency. This is all the code is supposed to cover. [P. 322, Oct. 27, 1947.]

The Chairman. There is, however, an equally dangerous phase of this inquiry which deals with Communist propaganda in various motion pictures and the techniques employed. At the present time the commitee has a special staff making an extensive study of this phase of the committee's inquiry. Either the full committee or a subcommittee will resume hearings on this matter in the near future, either in Washington or in Los Angeles, at which time those persons whose Communist records the committee has will be given an opportunity to appear before the committee to confirm or deny those affiliations. We will also have a number of witnesses who will deal

with propaganda in the films and the techniques employed. [P. 522, Oct. 30, 1947.]

* * *

Mr. (Jack) Warner. There is one little thing where the fellow on the train said, "My name is Jones, so I can't get a job." It was this kid named Diamond, a Jewish boy, in the Marines, a hero at Guadalcanal. * * * Some of these lines have innuendos and double meanings, and things like that, and you have to take eight or ten Harvard law courses to find out what they mean. [P. 15, Oct. 20, 1947.]

* * *

The Chairman. Don't you think it would be very foolish for a Communist or a Communist sympathizer to attempt to write a script advocating the overthrow of the Government by force or violence?

Mr. Warner. It would not only be foolish, it would be something they could not get away with in the American motion picture industry in California, or anywhere else.

The Chairman. Exactly. So what would they do? They would put in slanted lines wherever they could and that is what you have been trying to keep out?

Mr. Warner. That is correct.

The Chairman. That is why you have been doing exactly the same thing in your business that we have been attempting to do in ours?

Mr. Warner. That is correct.

The Chairman. You have detected these slanted lines, lines that Communists or un-Americans, as you call them, would try to put in? [P. 17, Oct. 20, 1947.]

Mr. Menjou. Oh, yes, I believe that under certain circumstances a Communistic director, a Communistic writer, or a Communistic actor, even if he were under orders from the head of the studio not to inject Communism or un-Americanism or subversion into pictures, could easily subvert that order, under the proper circumstances, by a look, by an inflection, by a change in the voice. I think it could be easily done. I have never seen it done, but I think it could be done.

Mr. Stripling. You don't know of any examples?

Mr. Menjou. I cannot think of one at the moment, no, sir. [Pp. 94-95, Oct. 21, 1947.]

* * *

Mr. Stripling. Can you tell the committee whether or not in the past there have been efforts to discredit certain institutions of the American government by constantly referring to the members of Congress as being crooks, and so forth, in the pictures?

Mr. (Sam) Wood: I think there has been an effort. Of course, if you go back in pictures you will find frequently the banker or the man in public life, the doctor, any one of them would be the heavy in the picture. I think it is particularly bad if that is constantly shown; every night you go to the pictures you see a dishonest banker, or Senator, you begin to think that the whole system is wrong. That is the way they work on it. They figure if you can break down or destroy the confidence of the people in the government, or the gentlemen who are executing it, then it is a very simple thing to have a new idea for them—and, believe me, they have got one for you, too. [P. 61, Oct. 20, 1949.]

* * *

Mr. (Jack) Moffit. * * * There is also the campaign against religion, where the minister will be shown as the tool of his richest parishioner, where it will be inferred that the policies of an entire diocese, let us say, of the Episcopal Church, are dictated by a rich reactionary woman, where it will be inferred that an honest clergyman is interferred with in his duties to the poorer members of his diocese by rich and reactionary women.

There has also been the Party line of making the returned soldier fear that the world is against him, that the American principle is against him, that business is against him, that the free enterprise system is against him. You will see picture after picture in which the banker is presented as an unsympathetic man, who hates to give a GI a loan. In connection with that, I have a note here, based on my own inquiry, that I would like to read. [P. 122, Oct. 21, 1947.]

* * *

Mr. Moffit. Mr. Lavery follows the Communist tactic of scaring Americans to death with their own atom bomb. Ever since the armistice it seems to me that the people of the United States have been engaged in one of the great moral experiments in the history of mankind. For the first time, a people have had in their hands an invincible weapon and their sole concern has been, how not to use it. In exchange for that, the leftists have called us warmongers. They have insisted that we are imperialists, though we have taken no territory and the Russians have. And they have persistently insisted that if we didn't behave ourselves, if we didn't cease to be warmongers, if we didn't cease to be imperialists who get nothing, that we would be blown to death by our own atom bomb.

Now, Mr. Lavery promotes that same idea in this play. One line says, "I met a Russian the other day. He wanted to bet me the Russians could smash just as many atoms as we could. But I was smart. I wouldn't bet him." There is another line. The heroine's brother remonstrating with her for having spent her last thousand dollars to go to Europe to escape from the air of Washington, which she found very oppressive, says, "Sure, but I'm a pretty smart fellow, getting smarter all the time. I didn't have to take my last thousand dollars and throw it away on one last look at the vanishing continent of Europe. No, sir. I save my money. I got all the disillusionment I wanted right here at home. I just stood up night after night in the best Washington bars with the best Senators and the best Congressmen and the best everybody, and you know what, I feel just as awful as you do and I never left home at all." [Pp. 123-124, Oct. 21, 1947.]

* * *

Mr. Moffit. I might also add that Mr. Lavery—I don't want to bore you with these lengthy quotations, unless you wish to hear them, but he also strongly advocates that the United States abandon its sovereignty and abandon its sovereignty to become part of a world state. In the course of the play, he admits that the Russians don't want to do that either, but his excuse is that the Russians have had their soverignty just a little while and we shouldn't be impatient if they wish to enjoy it for some time—but that we have had it long enough that we should be willing to give it up. [Pp. 125, 126, Oct. 21, 1947.]

* * *

Mr. Moffit. Forty-four out of 100 of the best plays produced on Broadway from 1936 through the season

of 1946 have contained material to further the Communist Party line. Nothing like that has occurred in Hollywood. 233 other plays produced during the same period favored the party line.

Mr. Stripling. Mr. Moffit, this is all your opinion as a critic; is that right? [P. 114, Oct. 21, 1947.]

* * *

Mr. Stripling. Have you ever had any personal encounter with any Communist writers who have sought to place propaganda in pictures which you were directing?

Mr. (Leo) McCarey. Yes, I have.

Mr. Stripling. Would you detail that instance to the committee?

Mr. McCarey. I have had many experiences where ideas were suggested by myself and they would throw cold water on them if they did not agree with their own policy. They were always submitting books for me to read and I always had to be on the alert to find the latent Communist propaganda in the stories they had me read.

Mr. Stripling. It is very subtle, in other words. [P. 226, Oct. 23, 1947.]

* * *

Mr. (Jack) Warner. * * * The Epstein brothers worked on a picture called Animal Kingdom. As I recall, that was aimed at the capitalistic system—not exactly, but the rich man is always the villain. [P. 44, Oct. 20, 1947.]

* * *

Mr. Warner. * * * John Garfield played the part of the boy and he was mad at Joan Crawford for romantic reasons and said, "Your father is a banker." He was

alluding to the fact she was rich and had all of the money. He said, "My father lives over a grocery store," that is very, very subtle, but if you see the film with those lines in it you will see the reason for it. But it is not in the film. I eliminated it from the script. Sometimes you eliminate those things and they leave them in because it plays good and everybody is trying to be a Voltaire. All these writers and actors want to "Voltaire" about freedom of press and freedom of speech. I can go on if you want me to. [P. 44, Oct. 20, 1947.]

* * *

Mr. Moffit. A number of pictures have shown the banker as the villain, pictures dealing with returned veteran. [P. 122, Oct. 21, 1947.]

* * *

Mr. Moffit. Yes, sir. Emmett Lavery is the president of the Screen Writers Guild. His opinions upon the Congress I think are set forth in a play which is now the subject of a $2,000,000 libel suit. The play is called "The Gentleman from Athens". In the character of Cousin Vincent, the banker, Mr. Lavery follows the line of making him a very unsympathetic character, just because he is a banker. We are never told that he has done any specific thing that is villainous, but in relation to him there are such lines as "You have to know him before you begin to despise him". The mere sight of him scares the heroine into the jitters. That attitude toward him is maintained throughout the play, though no specific act is charged against him. [P. 123, Oct. 21, 1947.]

* * *

Mr. Stripling. As a director, Mr. McCarey, what do you think the dangers are of permitting pictures to be

made in which the institutions in this country are portrayed in a disparaging light? In other words, if pictures are made which always have the banker as a heavy, as it has been referred to in the testimony, and that picture is shown in foreign countries, Europe, and so on, what do you think the ultimate effect would be?

Mr. McCarey. Well, naturally, it would give a very unfavorable opinion of people who are successful in the United States.

Mr. Stripling. Do you think that is a dangerous practice for the motion pictures to pursue?

Mr. McCarey. I think it is a very dangerous practice. [P. 226, Oct. 23, 1947.]

* * *

Mr. Stripling. Do you know whether or not Mr. Odets was successful in injecting any propaganda into the film?

Mrs. (Lela) Rogers. I have here under date line of October 2, 1944, a copy of the Hollywood Reporter with a review of None but the Lonely Heart. The Hollywood Reporter is a Hollywood trade paper. I will read the criticism that I read at that time:

"The story, pitched in a low key, is moody and somber throughout, in the Russian manner and plods inexorably to its gloomy ending with only slight redemption in the ray of hope expressed in one of the final speeches. For the most part it moves slowly and takes time out for a bit of propaganda preachment whenever Director Clifford Odets, who also wrote the script for the Richard Lewellyn novel, felt the urge."

Mr. Stripling. Would you say that was a typical example of how a Communist would be successful in injecting propaganda? They refer there—they use the language, I believe, "propaganda preachment."

Mrs. Rogers. That is right. I think that this is a splendid example, this picture, of what type of propaganda Communists like to inject in motion pictures. [P. 232.]

* * *

Rep. McDowell. Mrs. Rogers, you had devoted many years to the reading of manuscripts and the study of pictures in general. You make the statement here that there was Communist propaganda, as you detected it, in this film None But the Lonely Heart. I haven't heard any description of Communist propaganda in these films yet except that a banker was shown occasionally as being a no-good, and so forth. Well, of course, I know many fine bankers, many patriotic men. I also know some stinkers that should have been in jail 30 years ago. That doesn't necessarily constitute the Communist propaganda. What would you describe in his film as being Communist propaganda?

Mrs. Rogers. In None But the Lonely Heart?

Rep. McDowell. Yes.

Mrs. Rogers. I can't quote the lines of the play exactly but I can give you the sense of them. There is one place in which—it is unfair, may I say, to take a scene from its context and try to make it sound like Communist propaganda, because a Communist is very careful, very clever, and very devious in the way he sets the film. If I were to give you a line from that play straight out you would say, "What is wrong with that line?" unless you knew that the Communist is trying in every way to tear down our free-enterprise system, to make the people lose faith in it; so that they will want to get something else, and the Communists have it waiting for them.

I will tell you of one line. The mother in the story runs a second-hand store. The son says to her, "You are not going to"—in essence, I am not quoting this exactly because I can't remember it exactly—he said to her, "You are not going to get me to work here and squeeze pennies out of little people poorer than I am."

Now, laid upon the background of—that is the free-enterprise system—trade, and we don't necessarily squeeze pennies from people poorer than we are. Many people are poorer and many people are richer.

As I say, you find yourself in an awful hole the moment you start to remove one of the scenes from its context. [P. 234, Oct. 24, 1947.]

* * *

The Chairman. Let me ask you one more question. Do you think that communism is on the increase or on the decrease out in Hollywood?

Mr. (Gary) Cooper. It is very difficult to say right now, within these last few months, because it has become unpopular and a little risky to say too much. You notice the difference. People who were quite easy to express their thoughts before begin to clam up more than they used to. [P. 224, Oct. 23, 1947.]

* * *

(Mr. Johnston.) When I talk about freedom of speech in connection with this hearing, I mean just this: You don't need to pass a law to choke off free speech or seriously curtail it. Intimidation or coercion will do it just as well. You can't make good and honest motion pictures in an atmosphere of fear.

I intend to use every influence at my command to keep the screen free. I don't propose that Government shall

tell the motion picture industry, directly or by coercion, what kind of pictures it ought to make. I am as wholeheartedly against that as I would be against dictating to the press or the radio, to the book publishers or to the magazines. [P. 307, Oct. 27, 1947.]

* * *

E. The Motion Picture Industry's Overall Statement of Policy as Presented to the Committee.

[Mr. (Eric) Johnston, president of the Motion Picture Producers Association, testified as follows with respect to action taken by the Motion Picture Producers Association prior to the hearing in October 1947. [P. 312 *et seq.*, Oct. 27, 1947.]]

Mr. Johnston (reading):]

"The Association of Motion Picture Producers today were asked to adopt a three-point program to meet the issue of communism in Hollywood and to secure a fair and dignified representation of the facts on the motion-picture industry to the American people. The program proposed that:

"1. Insistence upon a fair and objective investigation by the Thomas Un-American Committee. Vague blanket charges that communism had captured the American screen before responsible witnesses have been heard by the entire committee is not in the American tradition. Nothing can be accomplished by smearing all of Hollywood with the brush of communism. Script burning and head hunting are un-American techniques. We want the facts, hard, specific facts, and that kind of an investigation we invite.

"We want the facts so that we will know whether we are exonerated or condemned.

"Our industry is determined at this time that we shall have a complete and decisive investigation. This must be an investigation to end all investigations in Hollywood.

"Hollywood is weary of being the national whipping boy for congressional committees. We are tired of having irresponsible charges made again and again and again, and not sustained. If we have committed a crime we want to know it. If not, we should not be badgered by congressional committees.

"We are a responsible industry and we would like to spend our time making pictures and not dissipate our energies and our efforts in responding to committee investigations.

"2. Agreed not to employ proven Communists in Hollywood jobs where they would be in a position to influence the screen. Hollywood producers recognize the responsibility to keep the American screen free from Communists or any other subversive propaganda. The evidence is conclusive that Communists are a destructive force and their constant under-cover activities are designed to create chaos and conflict.

"We reject the Communist not because of his ideas but because of his allegiance and loyalty to a foreign power. Every American Communist is a potential foreign agent. America has never been afraid of new ideas. We welcome them in all fields, political, economic, and social.

"The free play of ideas is the strength of our democracy. It is the completion of ideas which makes America strong. Sedition is not competition, and this industry will not tolerate seditionists; but we must make sure we do not chip away our freedoms to get the seditionists.

"The protection of the innocent is still supreme. There is no higher duty under our American system of juris-

prudence. We must be scrupulous to avoid indiscriminate labeling. Every time you tag an innocent person with a red label you play into the hands of the Communists.

"I am not interested in the pastel shades, the parlor pinks or salmon-colored zealots. They are just plain dupes and fools. My concern is the Red conspirator, the man who uses the freedoms of democracy to destroy democracy.

"We emphasize that in agreeing not to employ proven Communists we mean just that. The proof must be conclusive and it is the responsibility of the Un-American Committee to furnish the proof and the names.

"3. The employment of James Byrnes, former Secretary of State, to represent the Association of Motion Picture Producers in counseling and presenting all the facts about the industry to the Un-American Committee and the American public.

"The record of the motion-picture industry in war and peace is unexcelled by any other industry.

"Many Americans see motion pictures daily. They not only see them, they recommend them, and they love them. That is true in every country which permits the showing of American films. We enjoy the highest prestige and standing everywhere.

"American films are vital to the American design of living because they give the lie by visual evidence to totalitarian propaganda. Our pictures produced under the democratic form of government inevitably reflect democratic habits of thought and life and action. They are

democratic habits of thought and life and action. They are bound to convey some of the virility, the zest, and joy of living which are characteristic of life in our country. These are qualities which other people need most at this time, and these are the qualities that make American films hated and feared by Communists everywhere: American motion pictures truly reflecting American life have been possible because of freedom of the screen. We intend to protect this sacred right. We are determined not to permit Communist propaganda, Government pressure, or political censorship to undermine that freedom."

Mr. Chairman, the Association of Motion Producers at Los Angeles adopted the first and the third. They did not adopt the second. The second is the agreement not to employ proven Communists in Hollywood on jobs where they would be in a position to influence the screen. They did not adopt that for several, what they thought, were very good reasons.

* * *

Mr. Johnston. The first reason assigned was that for us to join together to refuse to hire someone or some people would be a potential conspiracy, and our legal counsel advised against it.

Second, who was going to prove whether a man was a Communist or not? Was it going to be by due process of law in the traditional American manner, or was it to be arrogated to some committee in Hollywood to say he was a Communist, or some producer, and if they said he was a Communist they might at some future time find he

was a Republican, a Democrat, or a Socialist and not hire him.

In other words, who is going to prove that this man was a Communist? And under what methods?

Third, that it was the duty of Congress to determine two things: First, was a Communist an agent of a foreign government—as I believe he is—and/or second, is he attempting to overthrow our Government by unconstitutional means. Therefore, it was up to Congress to make these two determinations before we could take action.

I must confess they convinced me they were right on all three points, Mr. Chairman, and that is the reason they did not attempt No. 2.

Mr. Stripling. Did you urge the adoption of No. 2?

Mr. Johnston. I did; I urged the adoption of No. 2 but the questioning from our legal counsel present, and from the membership present, convinced me I was wrong. [Pp. 312-313, Oct. 27, 1947.]

2. Activities of the Committee With Respect to the Entertainment Industries Subsequent to the Initial Hearing of 1947.

A. Activities of the Committee With Respect to Blacklisting.

Rep. Kearney. To your knowledge, are any of the convicted Hollywood 10 writers now working for the motion-picture industry?

Mr. (Robert) Lees: Not to my knowledge. [P. 207, April 11, 1951.]*

* * *

Mr. Tavenner. I have another question. Is Mr. Hugo Butler still associated with you in a business way?

Mr. (John) Garfield: No, sir; absolutely not. He hasn't been for the last 4 months—3 months.

Mr. Tavenner. You mean since these hearings began? [P. 361, April 23, 1951.]

* * *

Rep. Kearney. Mr. Willner, do you know today of any of the convicted 10 Hollywood writers who are now writing in Hollywood under assumed names? [P. 385, April 24, 1951.]

Rep. Kearney. Do you know if any of the Hollywood writers who were convicted and served time in jail are now writing in Hollywood under assumed names or through other parties? [P. 406, April 25, 1951.]

* * *

*All references in this and succeeding sections of Appendix B are to the Hearings of the House Committee on Un-American Activities for the respective years indicated.

Mr. Tavenner. (Committee Counsel) This exhibit, Willner Exhibit No. 1, shows that These Many Years, by J. Redmond Prior, was sold to Warner Bros., for $20,000. The name of the artist, writer, and property is stated to be These Many Years, by J. Redmond Prior. Studio and individual who confirmed deal: Warner Bros., Budd Kay. It bears the date of March 1, 1948. Signature: George Willner.

* * *

With whom did you negotiate for the purchase and sale of this picture?

Mr. (George) Willner. I decline to answer for the reasons previously stated.

Mr. Tavenner: Do you know J. Redmond Prior?

Mr. Willner. I decline to answer for the same reason.

Mr. Tavenner. I now hand you a paid check marked "Paid, March 4, 1948," bearing date of March 3, 1948, payable to J. Redmond Prior, on account of the Nat Goldstone Agency, in the amount of $17,900.52, which check is endorsed on the back "J. Redmond Prior, Jeanne Cole; for deposit only." Can you identify that check and state for what purpose it was given (handing document to witness)?

* * *

Mr. Tavenner. Is it not a fact known to you, Mr. Willner, that Jeanne Cole, whose name appears on the back of that check, is the wife of Lester Cole?

Mr. Willner. I decline to answer that for the same reason.

Mr. Tavenner. And do you not also know that the maiden name of Jeanne Cole was Prior—that the last name was Prior?

Mr. Willner. I decline to answer for the same reason.

Rep. Kearney: Is Lester Cole now selling under the name of Jeanne Cole?

Mr. Willner. Mr. Kearney, I decline to answer that for the same reason previously stated. [Pp. 381-382, April 24, 1951.]

* * *

Rep. Kearney. . . . Do you have any knowledge as to whether any of the 10 Hollywood convicted writers are now selling their wares to the motion picture industry through a second or third party?

Mr. (Roy) Brewer. Well, I have some information which would indicate that that was the case, but I can't prove that that is the case.

Rep. Kearney. In other words, you have a great suspicion that that is the case.

* * *

Mr. Brewer: . . . The fellow who has any taint of communism on him today is having a tough time.

Rep. Kearney. Unless he sells his stories or writings through a second or third party?

Mr. Brewer: That is true.

* * *

Chairman Wood: In this connection, Mr. Counsel, I would like to make the statement that I have gone to some considerable pains personally to advise myself as to the attitude of responsible producers in the motion-picture industry, and I know at this time they are spending literally thousands and thousands of dollars undertaking to screen the backgrounds of all persons now employed in essential positions in the industry, and are exercising a great deal of diligence in that respect. I think

it is only fair that that be placed in the record at this time.

Rep. Kearney. I take it, the chairman includes screen writers, also?

Chairman Wood. They are employees. That goes to all employees in the industry.

Rep. Velde. Mr. Chairman, I didn't intend to convey the impression by my questions that the motion-picture industry was not cooperating fully in the hearings being conducted at the present time or in the ousting of Communist Party members from the motion-picture industry. I didn't mean to intimidate that. [Pp. 489-490, May 17, 1951.]

* * *

Mr. (Leo) Townsend. . . . I am presently employed at Warner Bros. studio as a screen writer. When I received my subpeona last week I went to the heads of the studio, told them I had a subpeona, told them what I planned to do here, that I was going to testify before the committee. They told me that my testimony would in no way affect my employment at their studio.

Rep. Walter. This committee has hoped that would be the position taken by various studios. . . . We don't feel that a man should be penalized for aiding the committee directed by the Congress of the United States to perform certain services. [P. 1509, Sept. 18, 1951.]

* * *

Rep. Doyle. Why did you go to Warner Bros. and tell them your story? . . .

Mr. Townsend. I felt I should be honest with them. If they had not known that I had been a member of the Communist Party, if they had not known that I had been subpeonaed, if they had not known that I was to appear

before this committee, I wanted to be completely honest with them. I went to them, told them I had been subpeonaed, told them I planned to testify. They said, "Your testimony will be in no way affect your employment here. We feel that anyone who cooperates with this committee is doing the industry a service."

Rep. Doyle. . . . That is certainly evidence of cooperation on the part of the employer in an effort to help clean up the mess. [P. 1530, Sept. 18, 1951.]

* * *

Rep. Wood (Chairman). I don't want to speak for the remaining members of this committee but if, by any action of this committee, we could be instrumental in eliminating from the field of public entertainment the views of people—particularly the youth of this country being moved to a large extent—people who decline to answer a question as to whether or not they are members of the Communist Party, it would make me extremely happy. [P. 1736, Sept. 21, 1951.]

* * *

Mr. Tavenner. But I am asking you now, with the knowledge that you have, would you knowingly put a person in charge of the administrative duties such as you had or, I might add, in the position that you now hold as a producer if they were a member of the Communist Party?

Mr. (Sidney) Buchman. Yes. Well, I would first consider certain professional competence, Mr. Tavenner.

Mr. Tavenner. Certain what?

Mr. Buchman. Professional competence. This would interest me first. After that, as to his views, this troubled subject of whether he is a subversive man and a dangerous man—

Mr. Tavenner. You would ask him?

Mr. Buchman. Or has committed an illegal act, I would wonder about it, but I think in view of public opinion and my feelings today, I would say, therefore, that I would not.

Mr. Tavenner. Thank you. That is all. [Pp. 1877-78, Sept. 25, 1951.]

* * *

Rep. Jackson. I have one more question. You have gone over the list of the friendly witnesses. What of the unfriendly witnesses? Do you have any knowledge of whether or not any material has been sold, or, conversely, has been purchased from those witnesses who have refused to cooperate and answer the questions of this committee?

Mr. (Carl) Tunberg. I have no direct knowledge of it, no. I heard of rumors that some members—some of the unfriendly 10 have written scripts under other names which have been purchased unwittingly by studios. I have no proof of that. [P. 1855, Sep. 25, 1951.]

* * *

Mr. Tavenner. How are you now employed?

Mr. (George) Glass. I am with the Stanley Kramer Co. I am in charge of advertising, exploitation, publicity, merchandising of motion pictures. We are a production company.

Mr. Tavenner. There was a witness who appeared before the committee by the name of Carl Foreman who was also an employee of that company; is that right?

Mr. Glass. Yes, sir.

Mr. Tavenner. He refused to testify?

Mr. Glass. Yes, sir.

Mr. Tavenner. With regard to most of the questions which were asked?

Mr. Glass. I recall him.

Mr. Tavenner. His connection with the firm was terminated promptly?

Mr. Glass. Totally inactive. He has no further connection with our firm. [P. 2495, Jan. 21, 1952.]

* * *

Rep. Wood. I am not going to let that statement go unchallenged. I know nothing about his economic conditions but if what he says here is true, it is not this committee that has cut his income off; it is him. We are giving you an opportunity now to restore it, if indeed you have lost it, by simply telling us the truth.

Dr. (Alexander E.) Pennes. By becoming an informer.

Rep. Wood. Well, if you want to put it that way, yes. [P. 4127, Oct. 3, 1952.]

* * *

Mr. (Herman) Waldman. For instance, I heard you say in what I assume is good faith, I heard you say, "We want these people to testify so they can go back to their jobs and their business" and would you guarantee that I have a job to go back to after I testify? Would you guarantee me that?

Rep. Doyle. I wish I could. I wish I could have your guaranty that you are not a member of the Communist Party. You could get some guaranty then. [Pp. 4212-3, Oct. 6, 1952.]

* * *

Rep. Jackson. Are you here in response to a subpoena?

Mr. (George) Bassman. No, sir; I came here because I felt that it was important for my work, which is in New York City, to have it on the record that whereas I may have at one time been a member of the Communist Party, I haven't been for over 12 years, that I am no longer

interested in it, and I wanted to take advantage of the fact that I knew this committee would give me this kind of a hearing. So to prospective employers in New York City, if the question were to come up, since I had been named, as to was I, or am I or am I not a member, I could truthfully state that I am not. [P. 2370, Jan. 28, 1952.]

* * *

Mr. Tavenner. Well, as shown from the transcript of the record, you denied before this committee that you had ever been a member of the Communist Party. Now, what do you desire to say about that?

Mr. (Danny) Dare. Well, I was in New York at that time with my family, employed, and the way the news was broken to me was quite a shock. I was called in by my employer and shown a newspaper article mentioning my name, as the testimony showed.

Well, I became panicky, and realizing that if I said, "Yes, this is true," I would immediately lose my job, which I particularly did not want to do at the time, not only from my financial standpoint but I was in the midst of doing an anti-Communist show called The Crusade for Freedom, which was a nationwide telecast, and I became emotionally panicky and I thought I could brazen it through, because actually I had been so little advised that I must did the wrong thing, did the stupid thing, through fear and panic. [P. 272, Mar. 23, 1953.]

* * *

Rep. Clardy. You have named a considerable number who you said were members of the party and active in pictures in one fashion or another. How many of those are still active in pictures today?

Mr. (David A.) Lang. There has been nobody named that has been an unfriendly witness or that has stood on

the fifth amendment that works in a motion-picture studio today, to my knowledge.

Rep. Clardy. So that you have named everybody removed from the scene, in one fashion or another?

Mr. Lang. I believe they have been. [P. 354, Mar. 24, 1953.]

* * *

Rep. Doyle. I feel as a member of this committee, I want to sincerely counter your charge that this committee is interested in blacklisting people. That is absolutely false. As a member of this committee, I want you to understand that I am not interested in anyone being blacklisted unless they are subversive and intend to unlawfully overthrow my Government. [P. 482, Mar. 26, 1953.]

* * *

Rep. Moulder. Since your return from the United States Army have you knowingly employed any member of the Communist Party in connection with your own work?

Mr. (Harold) Hecht. I have not. I have never employed a member of the Communist Party because he was a member of the Communist Party. I employed people purely and simply because I thought they were talented and the best suited to the work that I was looking for.

In December 1950 I made a flat policy with our company of not hiring any more Communists, investigating them and making sure that we did not hire any more communists, and since that time we have carried this out.

Before that—I want to say again—I never hired anyone because I knew he was a Communist, for that reason, but from that date we investigated and made specificially sure as to that. [P. 314, Mar. 23, 1953.]

* * *

Mr. (William M.) Alland. No, sir. I must say this on the record, that I have seen some members since I have withdrawn, and I must say I even hired Virginia Mullen

for a small part in a picture of mine, for 2 reasons—but I was sort of led to believe, I heard that she would, if she were called, be cooperative, and then she had 2 children and she was—how shall I put it—she appealed to my sympathy on that ground, that she needed the work. So I gave h . a day's work.

Rep. Doyle. How long ago, approximately?

Mr. Alland. I would say a year, a year and a half ago.

Rep. Doyle. You said you understood from her that she was cooperative with the committee?

Mr. Alland. I understood from her that if she were subpoened that she would be cooperative.

Rep. Doyle. Virginia Mullen?

Mr. Alland. She didn't even say this, but by inferences she led me to believe this, although, in all honesty, I have to say that she appealed to me on the basis of needing a job, and I, having known her and having known she had two kids, I did give her one. [P. 3528, Nov. 23, 1953.]

* * *

Mr. (Milton) Merlin. . . . . As a matter of fact, my purpose in bringing this up is that I would like to forestall what has been a question to me which has been to my personal concern to me and my profession, and as a citizen, that is the need to prove my innocence, and also have a time getting a job. You probably know about the confused situation in the television and radio industry, where even the mention of a name in connection with such means that you are lost and you don't know what to do about it. I ask the parties concerned to relieve other people of responsibility, but this means nothing to them.

So the reason I am down here is, one, personal, and the other is to be of any assistance I can be to you to help in some thing that I think is a thing that is needed and that will be of benefit in my success and additionally for

the guild. There is a personal reason for my being here, too. [P. 3552, Nov. 23, 1953.]

* * *

Mr. Kunzig (Committee Counsel). "I want to get your opinion on the rumor that since the exposé of Communist activity in the motion-picture industry, the residue of the Communist leftwing, and so forth, have secreted themselves in the legitimate stage in New York. Do you have any information about that?" [P. 7269. Questioning of Nicholas Bela, Dec. 14, 1954.]

B. Activities of the Committee With Respect to Control of Ideas and Censorship.

Mr. Tavenner (Committee Counsel). Well, now, what instances can you point out to the committee in which the Communists succeeded in influencing the content of the film?

Mr. (Harold) Ashe. As I said I didn't come prepared on this point. I would like to point out, however, that Blockade was written by Clifford Odets, I believe; and John Howard Lawson took the credit. Blockade was certainly a Communist film from start to finish. It used the situation in Spain; it is true, as the focal point for the film; but, if I had the time and had resources, I think I could trace Blockade right back to its original source; namely, one of the leading propagandists for the Soviet Union who had used the same film years and years and years before—used the same theme. The same theme was used at still a later date by a German producer who was a Communist, and in 1938, Mr. Lawson and Clifford Odets helped themselves to it again—gave it a different name a little different treatment. The theme was exactly the same.

Mr. Tavenner. Now do you think the success in being able to impart the Communist line into the film was the result of carelessness or any deliberate attempt on the part of the producers to permit such a thing—

Mr. Ashe. No.

Mr. Tavenner. Or was it a thing that you think was accomplished through stealth and deceit, or how do you explain it? . . . [P. 1436, Sept. 17, 1951.]

* * *

Rep. Doyle. * * * Now, let me say this, too: You are in a wonderful place, through your art, your music, your talent, which God blessed you with, to perhaps be very vigorous and positive in promoting Americanism in contrast to Communism. Let me suggest to you that you use that great talent which God has blessed you with to put into ballets in some way, to put into music in some way, that interpretation.

Mr. (Jerome) Robbins. Sir, all my works have been acclaimed for its American quality particularly.

Rep. Doyle. I realize that, but let me urge you to even put more of that in it where you can appropriately. [Pp. 1324-1325, May 5, 1953.]

* * *

Mr. (Max Nathan) Benoff. Well, I am glad and I appreciate and thank you for asking me that, because my name—and we have really gone over this—my recollection, by looking at lists—and everybody has a list today—and any place at all, you can't find my name on one organization, front, back, sideways, or anything; just nothing. I don't join. I am not a joiner. I am a stay-outer.

Rep. Clardy. Let's hope that continues. [P. 360, Mar. 24, 1953.]

* * *

3. Proceedings Before the Committee Relating to Petitioners.

A. References to Petitioners by Other Witnesses Before the Committee.

John Howland Chamberlin, page 838 (83rd Congress). [All references are to the Hearing of the Un-American Activities Committee for the respective Congress indicated.]

Howard da Silva, pages 142, 1602 (82nd Congress).

Guy Endore, pages 1580, 4275 (82nd Congress); pages 348, 944, 1480, 2339, 7265 (83rd Congress).

Donald A. Gordon, page 1582 (82nd Congress).

Fred Graff (None).

Alvin Hammer, page 4100 (82nd Congress); page 3518 (83rd Congress).

Edgar F. Huebsch, pages 636, 1517, 1579, 2309, 3531, 4252 (82nd Congress); page 349 (83rd Congress).

Paul Jarrico, pages 236, 286, 1513, 1597, 1686, 1726, 2073, 5378, 4094 (82nd Congress); pages 343, 359, 3523, 1494, 7253 (83rd Congress).

Robert Lees, pages 142, 1512, 1597, 1724, 3520, 4275 (82nd Congress); page 7523 (83rd Congress).

Albert Louis Levitt, page 1594 (82nd Congress); pages 930, 941, 350 (83rd Congress).

Paul Perlin, pages 2319, 4988, 3517 (83rd Congress).

Abraham Lincoln Polonsky, pages 141, 246, 288, 3533 (82nd Congress); pages 948, 4988 (83rd Congress).

Anne Revere, page 2303 (82nd Congress); page 2349 (83rd Congress).

Robert L. Richards, page 959, 4275 (82nd Congress).

Frederick I. Rinaldo, pages 1597, 1724 (82nd Congress); page 954, 1481, 7265 (83rd Congress).

Louise Rousseau, page 350, 4986 (83rd Congress).

Waldo Salt, pages 245, 286, 631, 1510, 1574 (82nd Congress); pages 930, 954, 967, 349, 1480, 2325, 7265 (83rd Congress).

Wilma Shore, pages 1594, 4276 (82nd Congress); page 350 (83rd Congress).

Louis Solomon, page 1594 (82nd Congress); pages 954, 340, 1477, 4986, 7265 (83rd Congress).

Gale Sondergaard, pages 1582, 1719 (82nd Congress); pages 311, 1349, 2303 (83rd Congress).

Philip Stevenson, page 4275 (82nd Congress); pages 944, 959 (83rd Congress).

Herta Uerkvitz, pages 1586, 1719 (82nd Congress); page 7265 (83rd Congress).

Michael Wilson, page 4252 (82nd Congress) pages 913, 929, 339, and 2338 (83rd Congress).

B. Nature of Activities Allegedly Engaged in by Petitioners.

Mr. Tavenner (Committee Counsel). The committee, in its study of the problem facing us in Hollywood, has been anxious to determine just what the purpose of the Communist Party was in its extreme efforts in organizing the party in this area. As a result of your experience and association with it can you tell the committee briefly what the aims and objectives of the Communist Party were in this area?

Mr. (Martin) Berkeley. Well, the aims, as I understood them from conferences, ... were the organization of a Screen Writers' Guild, which we needed very badly. The second objective was to get rid of Browne

and Bioff, the labor racketeers who were then the heads of the IATSE, who later served jail terms. Building an organization of extras, because, as I said before, they constituted the main body of actors. The formation of a Directors' Guild. . . . .

Another task was to build a labor daily out here. They had the Western Worker, which was a very sectarian newspaper. To supply aid to Spain. To expand the Hollywood Anti-Nazi League into a national organization, which would have been done except for the Hitler-Stalin pact, and also the formation of a left-wing Democratic Party organization in Hollywood which flowered at a later date as the Motion Picture Democratic Committee. [P. 1584, Sept. 19, 1951.]

* * *

Mr. Tavenner. I would like you tell us a little more about the character of the work of the Communist Party through the fractions dealing with the minority groups which you are now discussing.

Mr. Berkeley. Well, it took various forms. There was the problem of the minority group in the picture, in the film, itself; in the story you were working on. In the past many minority groups were degraded, both in the theater and in pictures, and a great deal of time and study went into the problem of how to treat the minority group in pictures. The problem of a Jew, how he should be made up, how he should speak; the manner of the Negro, and quite correct so; other work that was done—you see, things like the Scottsboro boys, they came under this particular group. . . .

Mr. Tavenner. Very well. There is an organization in Hollywood known as the Hollywood Theatre Alliance?

Mr. Berkeley. There was such an organization; yes, sir.

Mr. Tavenner. Did you come in contact with the work of that organization.

Mr. Berkeley. Yes. I worked—I attended a few meetings of the fraction of that organization around 1938 or 1939.

* * *

Mr. Tavenner. Did you know the circumstances under which it was organized?

Mr. Berkeley. The Hollywood Theatre Alliance was organized directly by the Communist Party for the purpose of presenting so-called progressive or left-wing or anti-Fascist propaganda.

I believe their first production, which was the one I couldn't think of before in relation to Mr. Bassman, was Meet the People, which was very successful both here and in New York. . . . [P. 1600, Sept. 19, 1951.]

* * *

Mr. Wheeler. And during this period of time were you also a member of the second group for the Communist Party? This was extra-curricular work, was it not?

Mrs. (Babette) Lang. Yes. This was my assignment, and also during that time I had another assignment which was to organize a blood donor's booth, which I did, and carried on that for many, many months. We had a blood Booth on Wilshire Boulevard, and we all took turns taking hours there in recruiting blood donors. So it all seemed a very worthwhile furthering of the war effort.

Mr. Wheeler. Who were the lecturers at these discussions?

Mrs. Lang. Actually, there were no lecturers. It was just as I said. The group would decide what they wanted to talk about, and then some person would just say. "Well, I'll look up and get some material on that subject," if it was the Negro question or the Jewish question or the Hitler-Stalin pact or whatever it was currently being talked about and thought about in the world. No one actually what you would call held the floor or gave any lectures. [Pp. 2340-2341, June 2, 1953.]

* * *

"The meetings consisted mainly, if you will remember the time, consisted mainly of discussions of—we were in a war then—discussions of how the war was going, current events, problems of actors in their work. It was more of a social, really a social occasion than a stereotyped kind of meeting." [P. 87, Testimony of Larry Parks, Mar. 21, 1951.]

* * *

"These meetings are, as a rule, fairly long and not terribly interesting. And they, you know, are very mild in terms of content. They would discuss day-to-day questions, you know, whatever those happened to be, the political questions of the day." [P. 243, testimony of Richard Collins, Apr. 12, 1951.]

* * *

". . . there was a good deal of propaganda within that Hollywood group about the time I was there, to get all of the members to write proletarian novels, and this seemed to be the line. They took no political stands on anything in the Hollywood group, and the other groups that I belonged to during the war were just interested in selling war bonds and stuff like that. The Hollywood group was interested only in Hollywood, and they never,

as far as I know, had a discussion of world politics. [P. 4274, testimony of Roy Huggins, Sept. 29, 1952.]

* * *

"The overall purpose was simply that these people were Communists and they met to discuss what was going on. In a meeting the discussion would usually be split up into what was going on in the industry that concerned them, and then part of the meeting would be devoted to the world situation, theoretical diagnoses, and so forth. [P. 141, testimony of Sterling Hayden, Apr. 10, 1951.]

* * *

Rep. Doyle. Did you ever receive any literature from Tompkins or anyone else which, in printed form, made any declaration or stated any policy or objective that caused you to conclude that the Communist Party, of which you later became a member, was interested in revolution against the American form of government?

Mr. Hayden. As I recall, it was always couched in other terms. I think a more perceptive person would have seen it. I did not at the time.

Rep. Doyle. You believe the literature you received from Tompkins did advocate the overthrow of the American form of government?

Mr. Hayden. I think that was the ultimate objective; yes.

Rep. Doyle. Do you have any of that literature now?

Mr. Hayden. No.

Rep. Doyle. Do you know where any of it could be had?

Mr. Hayden. No. I know it used to be out in plain sight in some of the book stores. [P. 152, Apr. 10, 1951.]

* * *

C. Record of Petitioners' Employment in the Industry.

John Howland Chamberlin. "I have been engaged as a professional actor in Hollywood and its environs since 1936." [P. 1506.]

* * * "Since there are over a hundred plays that I have participated in as an actor, I find it rather difficult to single out any one of them. * * * The first motion picture that I played in as an actor was 'The Best Years of Our Lives,' which I am very proud to have been associated with, and I wish to make the comment that one of the creative artists involved in the making of this picture said not too long ago that 'Due to the atmosphere of the country at the present, I would be unable to make such a picture today.' I charge that this Committee is responsible in helping create this kind of an atmosphere which creates censorship. * * * There have been some twenty motion pictures which I have participated in. The present one that is showing in the motion picture houses of the country is 'Pick Up.' There have been a number of television pictures that I have performed in as well." [P. 1507, Sept. 18, 1951.]

Howard da Silva. "From 1929 to 1938 I served as an actor on Broadway * * * I think the first time (in motion pictures was) in 1939, when I appeared in 'Abe Lincoln in Illinois.'" [P. 115, Mar. 21, 1951.]

Donald A. Gordon. "I am an assistant in the story department at Metro Goldwyn Mayer * * * (Prior to that time), I was head of the reading department at Paramount for six years." [Pp. 1786-1787, Sept. 24, 1951.]

Fred Graff. (I am) a semi-employed free lance actor. * * * I found myself with a contract with Columbia

Pictures in 1944 (February). * * * I remained under contract for the remainder of the year, at which time I was called to serve my country. * * * (After my discharge) I had found six weeks remaining on my contract, and I filled them out at Columbia.", [P. 299, Apr. 13, 1951.]

Alvin Hammer. "(as a night club entertainer in New York, I was employed at the) Village Vanguard * * * Cafe Society, Rainbow Room, (I was employed at Cafe Society) about eighteen months * * * sometime in 1941. [P. 453.] * * * I played in about thirty pictures * * * 'Mother Wore Tights,' * * * 'Fabulous Susan.'" [P. 456, May 16, 1951.]

Edward F. Huebsch. "I became a screen writer ten days after my discharge from the Army in 1946." [P. 374, Mar. 23, 1953.]

Paul Jarrico. "Until two weeks ago I was a screen writer. * * * I was employed at RKO Radio Pictures until the day I received a subpoena from this Committee." [P. 275, April 13, 1951.]

Robert Lees. "I started acting in an extra capacity, bit capacity, for the years 1930 and 1934. Starting in 1934 I became a writer at Metro Goldwyn Mayer, where I did some fifty-five, roughly, short films—Robert Benchley, Pete Smith, Crime Doesn't Pay. Quite a few shorts, two of which won Academy Awards at the time. Then I started writing features and they were primarily comedies. There was one 'No Time for Love' with Fred MacMurray, Claudette Colbert * * * About 1942 * * * I worked at Universal International and did quite a few films for them, mostly Abbott and Costello

comedies; I think about five or six of them. 'Hold That Ghost,' 'Meet Frankenstein,' * * * 'Meet the Invisible Man,' 'Widow of Wagon's Gap' * * * the last employment I had was at Republic Studios where I was employed to write a picture for Judy Canova * * * I would think about a week or two before I received my subpoena, and I remember attributing the fact that I was suddenly let go to the fact that maybe my appearance before this Committee was responsible * * * My last employment prior to that at Universal International Studios where I was working on a picture for Jimmy Durante and Donald O'Conner * * * The last production was 'The Real McCoy' for Abbott and Costello, which hasn't been released and the one before that which is now playing the theatres is 'Meet the Invisible Man' * * *. This was approximately in 1950.)" [Pp. 194, 195, Apr. 11, 1951.]

Albert Lewis Levitt. "I came out here in about 1939, and my employment background, generally, has included work as a reader in the studios, until the time I entered the Army, and upon my return from overseas I worked as a freelance writer at various studios [p. 1552]. * * * My name appears on a film called 'The Boy With Green Hair'; a script called 'The Wild Country,' which is not yet produced and a film called 'Shakedown'; on a film called 'Mrs. Mike'; and a script which is now in preparation called 'Dream Wife.'" [P. 1558, Sept. 18, 1951.]

Paul Perlin. "Since 1935 I worked in the film industry * * until the time that I volunteered for service in the armed forces. * * * My main place of employment was Universal Pictures where I worked a number of years. * * * (Upon return from service) I was again

employed in the motion picture industry up until the time I was blacklisted on June 15." [Pp. 4228, 4229, Oct. 6, 1952.]

Abraham Lincoln Polonsky. "I started work in the radio business toward the end of 1936, and I worked in radio until toward the end of 1943, and I also wrote several books in that time and stories and serials for the magazines. After that, beginning in 1945 I began to work in motion pictures, and I have worked there since with the exception of some stories that I wrote for magazines and a novel recently published by Little, Brown & Company. * * * I got a screen credit on a picture in which Marlene Dietrich appeared called 'Golden Earrings.' I wrote the screen play 'Body and Soul,' and collaborated in writing the play 'Force of Evil,' and was the sole author of the screen play, 'I Can Get It For You Wholesale' * * * I was employed at Twentieth Century Fox until this business started, and then I was released." [Pp. 396, 397, Apr. 25, 1951.]

* * *

Anne Revere. "I began in the theatre (as an actress) many years ago. I presume that my most successful plays were 'Double Door' and 'The Children's Hour' in which I had an extended engagement. I also established or helped to establish a theatre, which I owned and operated, in Surrey, Maine. Subsequently, in 1934, I first came to Hollywood to do the picture version of 'Double Door,' then went back to New York. For approximately eleven years, I would say, I've been a resident of California, and during a great portion of that time, employed in the studios." [P. 319, Apr. 17, 1951.]

Robert L. Richards. "I worked for Time, Inc. for about seven years. I was a writer for and subsequently

a producer of the March of Time radio program. I was an associate producer of the March of Time on the Screen. * * * I came out to Hollywood about the end of 1942, did some radio, joined the merchant marine, subsequently went into motion pictures. I have been employed for about * * * about four years quite steadily, writing screen plays in the motion picture industry. * * * [P. 1641] * * * My first screen credit was a picture called 'One Sunday Afternoon' for Warner Brothers. It was a musical. My next screen credit was a picture called 'Act of Violence' for Metro Goldwyn Mayer. * * * My next screen credit for Universal International was a picture called 'Johnny Stoolpigeon.' My (next) credit was * * * 'Winchester 73' * * * There was a picture called 'Air Cadet,' 'Kansas Riders'." [P. 1643, Sept. 20, 1951.]

Louise Rousseau. "Since 1943 * * * I write Westerns as a whole. * * * I have written for Jimmy Wakeley, Monte Hale, The Durango Kid, the Lone Ranger and the Cisco Kid." [P. 1740, Sept. 21, 1951.]

Waldo Salt. "I began as a junior writer, I believe I was twenty years old, at Metro Goldwyn Mayer; worked there for five years * * * I think it began in 1936 and ran through to 1941 * * * I had credit on 'Shop Worn Angel,' * * * 'Wild Man of Borneo' * * * 'Tonight We Raid Calais' for Twentieth Century Fox 'Mr. Winkle Goes to War' for Columbia, 'Rachel and the Stranger' for RKO * * * 'The Flame and the Arrow' for Warner Brothers." [P. 260.]

Rep. Jackson. * * * Mr. Salt, you are employed by Norma Productions; is that my understanding?

Mr. Salt. No. That was terminated as soon as my subpoena was made public.

Rep. Jackson. Who is the head of Norma Productions?

Mr. Salt. Norma Productions is an independent company, I believe, made up of Harold Hecht and Burt Lancaster.

Rep. Jackson. When was your last employment at R-K-O, Mr. Salt?

Mr. Salt. It was just before I went to work on this. I would say that it was 3 or 4 months. I am not exactly sure of the date. I was rushing to finish one screen play to move over to another.

Rep. Jackson. Was that in 1950?

Mr. Salt. I think it probably was; yes.

Rep. Jackson. What script were you engaged on at R-K-O?

Mr. Salt. I finished the screen play of 'The Day They Gave the Babies Away.'

Rep. Jackson. Who hired you at R-K-O?

Mr. Salt. Eddie Granger. [P. 272, Apr. 13, 1951.]

Gail Sondergaard. "I began (as an actress) on a touring Shakespearean Company. * * * I worked with Jessie Bonstelle in Detroit for two years as her second and then her leading lady. I worked with the Theatre Guild for a number of years * * * in many Broadway plays. I went to Hollywood and I have been there for the past six years. * * * [P. 122, Mar. 21, 1951.] Won an Oscar for her performance in 'Anthony Adverse' and nominated for another for 'Anna and the King of Siam.'" [P. 5391, July 17, 1956.]

Philip Edward Stevenson. "(I began) as a screen writer in 1944 * * * I received credit on my first picture which was the Ernie Pyle 'Story of G. I. Joe.'" [Pp. 1614-1615, Sept. 19, 1951.]

Herta Uerkvitz. "I have been in the motion picture industry steadily since 1922, and in this particular architectural field, specifically in charge of a department since 1936 * * * I have been at Metro Goldwyn Mayer since 1929. Previous to that I was in several other large studios." [P. 1700, Sept. 20, 1951.]

Michael Wilson. "I am a writer and I intend to continue being a writer despite any attempt to blacklist me."

* * *

Rep. Wood (Chairman). Just a moment. If by that statement you seek to leave an inference that anyone here is seeking to blacklist you, I want to take exception to it at this point and remind you, sir, that as far as the activities of this Committee are concerned there is no attempt to blacklist anybody.

Mr. Wilson. Well, it seems to me, Mr. Wood, that in view of the fact that three days after I announced to my employer that I had a subpoena from your Committee, despite the fact that I had been accused of nothing, I was taken off the payroll.

Rep. Wood. Under those circumstances, sir, I hope by your testimony here you will convince your employer that your removal from the payroll was without justification and we are giving you the opportunity to do just that on the best forum that I know of.

* * *

My first credit was a picture called 'The Men in Her Life' * * * about 1940. I then did a number of Hopalong Cassidy pictures * * * I then entered the service of my country and after the war, three years later I was again employed. I contributed to a picture called 'It's a Wonderful Life,' 'A Place in the Sun,' based on

Mr. Theodore Dreiser's 'An American Tragedy,' * * * 'Five Fingers' * * * a screen play * * * on Thomas Wolfe's novel, 'Look Homeward Angel,' and a second called 'The Friendly Persuasion,' which was about the Quaker people. I might add, Mr. Tavenner, that I feel this Committee might take the credit, or a part of it at least, for the fact that 'The Friendly Persuasion' was not produced, in view of the fact, that it dealt warmly, in my opinion, with a peace-loving people. [Pp. 1674, 1676, Sept. 20, 1951.]

D. The Committee's Program of Blacklisting Petitioners and Their Objections Thereto.

John Howland Chamberlin. My present occupation is an actor, and I find it deeply repugnant and profoundly un-American to be smeared, blacklisted, and strangled economically by my presence before this Committee.

Rep. Wood (Chairman). Mr. Chamberlain, your presence before this Committee is the best forum that I knaow of for you to relieve your self of any smear or blacklist. [P. 1506.]

* * *

Mr. Tavenner. Who employed you in connection with those two pictures ('The Best Years of Our Lives' and 'Pick Up')?

Mr. Chamberlin. The procedure of employment in the motion picture industry is through the actor's agent, together with the studio or the producing company which is responsible for that particular picture.

Mr. Tavenner. Who was your agent in those two instances?

Mr. Chamberlin. Bender & Ward Agency.

Mr. Tavenner. In both instances?

Mr. Chamberlin. Yes, in both instances.

Mr. Tavenner. Was any inquiry made of you regarding your Communist Party or alleged Communist Party affiliations prior to your employment in those pictures? [P. 1507, Sept. 18, 1951 Hearings, 82nd Congress.]

Howard da Silva.

Counsel for da Silva and Gale Sondergaard sent a telegraphic motion to quash their subpoenas on March 20, 1951, stating:

"This motion will be made upon the grounds that our clients have not been subpoenaed merely as witnesses but rather they occupy the position of defendants charged with political heresy in a proceeding which can result in deprivation of their livelihoods." [P. 112.]

* * *

"I refuse to answer the question (whether he was a vice-president of the Civil Rights Congress) on the following basis: The First and Fifth Amendments and all of the Bill of Rights protect me from any inquisitorial procedure, and I may not be compelled to cooperate with this Committee in producing evidence designed to incriminate me and to drive me from my profession as an actor." [P. 115, Mar. 21, 1951.]

Paul Jarrico.

Mr. Tavenner. By what company were you employed?

Mr. Jarrico. RKO Radio Pictures.

Mr. Tavenner. Who employed you?

Mr. Jarrico. I was employed by the studio.

Mr. Tavenner. The studio must have had an official representative, of course in making the employment. Who was he?

Mr. Jarrico. Well, my immediate producer was Mr. Robert Sparks. However, I must protest at this point.

It seems to me an attempt to create the basis for a blacklist in Hollywood, on the basis of guilt by employment, guilt by the mere fact that you employ a man. Mr. Sparks, a conservative gentleman, I am sure, employed me because he thought I was the best man to do that particular job, and not because of my politics. [P. 275.]

Rep. Wood (Chairman). * * * No man has ever come before this Committee yet and answered truthfully and frankly the questions that have been put to him who has ever, to my knowledge, been injured thereby. If people are being deprived of any rights or privileges of employment because of their appearance before this Committee, it has been because of matters that they themselves have brought about, and not this Committee. If being a member of a subversive organization and admitting such causes a man to lose some employment rights, that is his responsibility and not this Committee's. If he declines to answer whether he has or not and thereby loses his employment rights, that likewise is his responsibility and not this Committee's. This Committee has never yet been responsible for any man being a member of any organization, subversive or otherwise." [Pp. 281, 282, April 13, 1951.]

Robert Lees.

Mr. Tavenner. In any of the instances in which you were not employed, were you questioned about your affiliations with the Communist Party or any Communist Party organizations? * * *

Mr. Lees. * * * There has been no question of any political affiliations in the terms of my employment that I have discussed or even been asked to discuss by any of the people I have worked for. Even up to the very last time I was hired. The general concept seemed

to be that a man was hired on his ability as a writer and not on any kind of political affiliations he might have, and simply as to whether he could do the job or not do the job. [Pp. 197, 198.]

Mr. Tavenner. Has the Screen Writers Guild to your knowledge made an effort to remove not from membership but to curtail the activities of persons thought to be members of the Communist Party within this group? * * *

Mr. Lees. Not that I know of. I might say that there is a statement of policy in the Screen Writers Guild which says that anyone can be a member of the Screen Writers Guild without any ban because of race, creed, religion, political beliefs, something similar to the First Amendment. Nobody is required to be anything but a writer to joint the Screen Writers Guild. [P. 206.]

Gale Sondergaard.

Mr. Arens (Committee Counsel). I invite your attention to a report which was published very recently on so-called "blacklisting" by the Fund for the Republic, in which are set forth a series of some few cases alleged by the author to be typical of people who have been denied employment or have been impeded in their employment. I should like to read you one particular paragraph which is applicable to yourself.

"Gale Sondergaard, wife of Herbert Biberman of the Hollywood Ten, found that she was suddenly 'unemployable' after her husband refused to testify, though she had previously made about 45 pictures, had won an Oscar for her performance in 'Anthony Adverse' and had been nominated for another after she appeared in 'Anna and the King of Siam.' Following the 1947 hearings Miss

Sondergaard made only one film, produced by Mervyn LeRoy. LeRoy told her that he had been questioned by dozens of people who asked him wonderingly if he did not know who she was."

On the basis of this report which is published by a great foundation with tremendous resources and being disseminated over the length and breadth of this land, I should like to ask you if it is a fact that following your husband's appearance your actual activity in the theatrical world was minimized. Is that correct?

Miss Sondergaard. I would say it very definitely is correct in the motion picture industry.

Mr. Arens. In your judgment was that attributed exclusively to the fact, as recounted here, that your husband had refused to testify in a proceeding?

Miss Sondergaard. It would be my opinion that this was the reason I was not employed.

Rep. Scherer. What year was that, Mr. Counsel?

Mr. Arens. In 1947. Have you ever been discriminated against in employment in the theater because of your political beliefs?

Miss Sondergaard. Not to my knowledge.

Mr. Arens. Have you ever been discriminated against in the theater because you were a controversial figure?

Miss Sondergaard. Not to my mind.

Mr. Arens. In your judgment, following 1947 did any incident occur in your life which contributed to a lessening in your employment in the theater?

Miss Sondergaard. Yes, of course.

Mr. Arens. Kindly recount it just in your own words.

Miss Sondergaard. The fact that I was called before this committee and invoked the fifth amendment at that time.

Mr. Arens. In your opinion is that the exclusive and sole reason why you have had a lessening in your employment since 1947?

Miss Sondergaard. In my opinion, yes. [Pp. 5391, 5392, July 17, 1956.]

* * *

Mr. Arens. Do you regard it as blacklisting for the entertainment industry to preclude employment opportunity to people who have been identified under oath by responsible witnesses before a congressional committee as members of the Communist conspiracy? [P. 5398, July 17, 1956.]

E. The Bases for Petitioners' Refusals to Answer Questions Other Than the Fifth Amendment.

Howland Chamberlin.

Mr. Tavenner. * * * The Committee is in possession of information that you registered as a member of the Communist Party for the 1938 election, and I would like to give you an opportunity to explain that. * * *

Mr. Chamberlin. It is my opinion that this Committee is invading the rights of a person's personal political views, and, therefore, I must point out in my answer to this question that it neither confirms nor denies guilt in this question, and I invoke my right and my privilege in order not to testify against myself to the use of the Fifth Amendment. * * *

Rep. Potter. From your testimony, I assume that it is your contention that the Communist Party is a politi-

cal party rather than an international conspiracy; do you care to comment on that assumption I have from your testimony?

Mr. Chamberlin. I cannot help the assumption of the congressmen of this Committee taken regarding to any statement that I may make. I would be very happy to express my personal beliefs if there was not an atmosphere of repression and a feeling of persecution and, therefore, I must stand on the grounds similarly stated. [P. 1508, Sept. 18, 1951.]

Howard da Silva.

"At this point may I object to being called to testify against myself in this hearing. I object because the First and Fifth Amendments and all the Bill of Rights protect me from any inquisitorial procedure, and I may not be compelled to cooperate with this Committee in producing evidence designed to incriminate me and to drive me from my profession as an actor." [P. 114, March 21, 1951.]

Paul Jarrico.

"I feel I am defending the Constitution, sir, and not hiding behind it. I feel that sincerely. I feel that if you were sincere in your declarations against blacklisting that you would make it plain that the people who claim their constitutional privileges should not be discriminated against in Hollywood, because Hollywood has the impression that you intend everyone who is called before this Committee and who does not cooperate with this Committee to be driven from the industry." [P. 281, April 13, 1951.]

Edward F. Huebsch.

"This question goes to the issue of my right to attend meetings and * * * I cannot answer that because Congress cannot tell me what meetings I should go to and which I should not go to. That is the question of the First Amendment." [P. 374, March 25, 1953.]

Robert Lees.

"I am claiming the right not to answer that question on the grounds of the First Amendment, which I believe guarantees freedom of belief and expression, and the Fifth Amendment which says that a man is not required to testify against himself." [Pp. 198, 199.]

* * *

Mr. Lees. * * * I feel that this certainly comes under the heading of some kind of pressure that can be termed "blacklist", if you will and that I don't feel that a blacklist denying people employment for whatever political beliefs they might hold is American.

Rep. Doyle. Not even if those people directly or indirectly are interested in using force and violence to upset the constitutional form of government in this country as testified to yesterday by your fellow actor Hayden?

Mr. Lees. I said this—I have to make myself very clear about this. I said that anyone who uses force or violence should be treated by the proper authorities.

Rep. Doyle. All right.

Mr. Lees. I also stated that matters of opinion are sacred under our First Amendment, and when you go into the area of thought—and, believe me, I as a writer make my living in the area of thought—in the matter of research, in the matter of reading, in the matter of all these things, I feel that any infringement on perhaps opinions or thoughts which this Committee or some

future committee might deem suddenly un-American becomes a very dangerous thing in this country. * * *

Rep. Doyle. Then do I understand that a courteous answer to me, and I appreciate your courteous answer—do I understand that you feel that if members of the Communist Party, * * * just talk about overthrowing the United States of America by force, is that O.K. so long as they don't take any action to do it? [Pp. 214, 215, March 11, 1951.]

Alfred Levitt.

Rep. Potter. Of course, you realize, as well as I, that the suppression of opinion in a Communist-dominated country, and within the Communist Party itself, is much more severe than any suppression of opinion that you would ever get or ever find in a democracy such as we have here.

Mr. Levitt. What I realize mostly is that this is my country, to which I give my allegiance and this is the country whose imperfections, when they exist, I wish to do everything I can to right, according to how I see it. I feel that any attempt to prevent me from doing so by blacklist, by official censure, or anything else tends to prevent the free exchange of ideas upon which this country is based. [Pp. 1557, 1558, Sept. 18, 1951.]

Paul Perlin.

"I further decline to answer on the grounds contained in public law 601, which, as I understand it, is supposed to commission the Committee to investigate in areas of subversive propaganda activities and to decide on remedial legislation. This public law 601, I contend, by the very nature of its language, is operating in the sphere of ideas, of opinions, of associations, and it is operating in

the very area of which the First Amendment grants to the American people. * * *

I further decline on the grounds contained in the First Amendment, which states to the best of my knowledge, that Congress shall pass no law abridging freedom of speech, press, or association, and by no law I understand it to mean no law. Maybe I am very naive but that is the way I understood it." [Pp. 4230, 4231, Oct. 6, 1952.]

Abraham Lincoln Polonsky.

"I am going to refuse to answer that question, sir, and claim the protection of the Fifth Amendment, the right against self incrimination, the right not to testify against myself, and so far as the First Amendment is relevant to it, I would like to use that too." [P. 397, April 25, 1951.]

Robert L. Richards.

"I may have opinions, some of which may be unpopular, unorthodox, or even totally erroneous. I must strongly maintain, sir, my right to hold these opinions and I further believe that it is a sacred duty of everyone in this room to maintain my right to hold those opinions." [P. 1646, Sept. 20, 1951.]

Philip Edward Stevenson.

"* * * I am going to claim my privileges under the First and Fifth Amendments of the Constitution in connection with such questions, and I hope I may observe that repeatedly the attempt has been made here to say that men are hiding behind these valuable protections to the individual. I want to make it perfectly clear that I am not hiding behind anything; that the Bill of Rights was designed, according to my research, to protect the individual from heresy hunting in the government." [P. 1615, Sept. 19, 1951.]

F. Questions Other Than Those Dealing With Communist Party Membership Put to Petitioners Which They Refused to Answer.

Howard da Silva.

"Have you ever held the position of vice president of * * * the New York Chapter of the Civil Rights Congress?" [P. 114.]

"Did you become affiliated with the Joint Anti-Fascist Refugee Committee?"

"Have you been affiliated with the Actors Laboratory in Hollywood?" [P. 116.]

* * *

"Did you sign a statement * * * which defended the twelve Communist Party leaders who were convicted of conspiracy to overthrow the government of the United States by force and violence?" [P. 117.]

"Did you take part in that celebration (of the 75th birthday of Mother Bloor)?" [P. 120, March 21, 1951.]

Donald A. Gordon.

"Would you mind stating to the Committee the circumstances under which you made those contributions to the New Masses (particularly a poem which appeared on April 9, 1939), if you did so?" [P. 1788.]

"Were you a financial supporter of the New Masses?" [P. 1789.]

"Were you at any time a member of the American Russian Institute?" [P. 1789, Sept. 24, 1951.]

Alvin Hammer.

"The Daily Worker of February 19, 1938, page 2, announced that members of the Young Communist League had denounced Japan and called for a boycott of its goods in a demonstration before the Japanese Consulate

at 500 Fifth Avenue, New York City on the previous day, February 18, and the newspaper stated that in addition to pickets carrying the signs, Al Hammer of 13 West 17th Street, played the role of Emperor Hirohito, dressed in coolie clothes and pulling a ricksha with Death as the passenger. Do you recall that? [P. 454.]

"I have an excerpt from the Daily People's World of March 26, 1948, the heading of which is 'High Time Skits', and this article which I am going to hand you refers to a number of skits to be introduced in the Embassy Auditorium under the sponsorship of the Civil Rights Congress. Included among the sponsors appears the name Al Hammer. I would like you to look at that and state whether Al Hammer is the same person as Alvin Hammer." [P. 454, May 16, 1951.]

Robert Lees.

"Have you ever consulted or collaborated in any of your work with an individual by the name of Fred I. Rinaldo?" [P. 201.]

"Are you a subscriber to the Daily People's World, the Worker, and The Daily Worker, or any of them?" [P. 202.]

"Have you made any contributions to * * * The American Youth for Democracy?" [P. 202.]

"Have you made contributions to the People's Educational Center?" [P. 202.]

"Were you a delegate to the State Conference on Civil Rights held in San Francisco on August 27 and 28, 1941 * * *? [P. 203.]

"Were you a member of the Joint Anti-Fascist Refugee Committee?" [P. 204.]

"Did you write a script on the subject of atomic energy for the Atomic Energy Commission of the Hollywood Writers Mobilization which was intended for a trans-continental radio program?" [P. 205.]

"Are you a member of the Actors Laboratory Theater?" [P. 205, April 11, 1951.]

Abraham Lincoln Polonsky.

"Were you an official of Actor's Laboratory? [P. 397.]

"Did you become one of the thirteen incorporators of the Hollywood Community Radio Group? [P. 398.]

"I have read that testimony to you (testimony given by Polonsky at a Federal Communications Commission hearing December 19, 1956 on the licensing of a station to the Hollywood Community Radio Group) and I am now going to ask you a question based on that testimony. Did those views as appear on the record of the hearing, of the propriety of the use of the radio station by Communists, apply equally to the use of the moving picture industry in connection with Communist activities? [P. 399.]

* * *

"Were you affiliated with the Council of Arts, Sciences and Professions as a member of its steering committee in 1950?" [P. 401, April 25, 1951.]

Anne Revere.

"While in Hollywood were your a member of Actor's Laboratory, Inc. or affiliated with it in any way?" [P. 319, April 17, 1951.]

Robert L. Richards.

"There appeared an article in the September 14, 1942 issue of the Daily Worker to the effect that the League

of American Writers was sponsoring the immediate opening of a second front, and I hand you the article in question. It appears from this article that your name was endorsed to this plan as sponsored by the League of American Writers. I am interested only to the extent of your participating in it as a member of the League of American Writers.",

* * *

"According to the November 3, 1947 issue of the Hollywood Reporter, there appears an advertisement contributed by the Actors' Division of the Progressive Citizens of America. * * * Now this advertisement proclaims that the Thomas-Rankin committee must go. Now, I raise no objection to anyone criticizing this committee or its predecessor, but we are anxious to know the extent to which the Communist Party imposes its thought, if any, upon other organizations in opposing the work of this committee or its predecessor, so after having looked at the article will you identify it as an advertisement in which you participated as one of the signers." [P. 1642, Sept. 20, 1951.]

Waldo Salt.

"Do you remember the Faculty School for Writers in Hollywood * * * conducted under the auspices of the League of American Writers?" [P. 261.]

"Were you at any time a member of the Board of Directors or other governing body of Actor's Laboratory, Inc.?"

* * *

"Did you make an announcement in the Daily People's World on January 20, 1944 supporting the formation of a group in Los Angeles to work for the release of Morris U. Schappes?"

* * *

"Were you a candidate for the executive board of the Hollywood Arts, Sciences and Professions Council of the Progressive Citizens of America in 1947?"

"Were you a sponsor of the state-wide conference on civil rights which was held in San Francisco, September 27-28, 1941?"

* * *

"Did you testify under oath at that time and before that committee (the State Committee on un-American Activities) in 1944 that you were a member of the Hollywood Democratic Committee?" [P. 262.]

"Were you affiliated with the Agricultural Aid Committee of the United Cannery, Packing and Allied Workers of America of which committee you were alleged to be chairman?"

* * *

"Mr. Salt, the cultural and scientific conference for world peace was held in New York City from March 25, to March 27, 1949 and this conference was attended by delegates from foreign countries as well as from this country. Did you endeavor to establish a comparable conference to be held in California * * * at which you planned that many of these foreign delegates would appear as speakers in the cultural and scientific conference which you desired to hold there, that is, 'Conference for Peace' so-called?" [P. 264, April 13, 1951.]

Gale Sondergaard.

"Are you familiar with an organization called the National Council of American Soviet Friendship?"

* * *

"You are familiar, I assume with an organization called the Motion Picture Artists Committee?"

* * *

"Have you been a sponsor at any time of the League of Women Shoppers?" [P. 123.]

"Miss Sondergaard, the records of the Committee disclose that you served as a sponsor of the Cultural and Scientific Congress for World Peace which was held at the Waldorf Astoria Hotel in New York City, March 25 to March 27, 1949 under the auspices of the National Council of Arts, Sciences and Professions. Is that correct?"

* * *

"The Daily Worker of June 23, 1950 states that you were scheduled to speak at the rally on June 28, 1950 in Madison Square Garden under the auspices of the Civil Rights Congress. On June 29, 1950, the newspaper stated that rally was staged in behalf of the eleven national Communist Party leaders who have been convicted of conspiracy to advocate the overthrow of the government by force and violence * * * Other speakers on the program * * * were identified as Gus Hall * * * Ben Gold, Paul Robeson, Vito Marcantonio, Ring Lardner, Jr. * * * I would like you to tell us all you know about the selection of the speakers on that occasion and your participation in the program, if you will?" [P. 124, March 21, 1951.]

Philip Edward Stevenson.

"Did you attend a meeting of that group, the Radio Committee of the Hollywood Writers Mobilization which discussed the plans of that body?" [P. 1616.]

"Have you at any time been a member of the Executive Board of the League of American Writers?"

* * *

"I would like to ask you if you participated in a meeting of an organization generally referred to as the

Thought Control Conference. It was a conference which was held on July 7, 1947, and was sponsored by the Hollywood Arts, Sciences and Professions Council of the Progressive Citizens of America * * * which called for the ending of the loyalty directive of President Truman and demanding that the House Committee on Un-American Activities be done away with as having no constitutional basis and also as to whether or not there was a resolution adopted at this conference calling for the freeing of Gerhart Eisler, Carl Marzani and the 16 defendants connected with the Joint Anti-Fascist Committee?" [P. 1617.]

* * *

"I show you a photostatic copy of pages 20 to 21 of June 1943 issue of Soviet Russia Today. These pages contain an open letter to the American people wherein the National Council of American Soviet Friendship calls on all Americans concerned with preserving United Nations unity to fight the menacing campaign against our Soviet ally. Among the names appearing as signers to this letter are Philip and Janet Stevenson. Will you examine the article referred to and state whether or not you were a signer of that letter sponsored by the National Council of American Soviet Friendship?" [P. 1618.]

* * *

"Were you a member of the Committee of 1,000?" [P. 1620, Sept. 19, 1951.]